

CHAPTER VII
COLLECTIONS

**COMPLIANCE
POLICY
AND
PROCEDURES
MANUAL**



Sales and Use Tax Department

California State Board of Equalization

March 1996

COLLECTIONS

Table of Contents

COLLECTIONS	700.000
GENERAL STATEMENT ON COLLECTIONS	703.000
Importance of Collection Activity	703.010
Collection Assignment Control	703.020
CONTACT AND INTERVIEW	706.000
Examination of File	706.010
Collection Interview	706.020
Conducting the Interview	706.030
Uncooperative Tax Debtors	706.040
Inability to Pay In Full	706.050
Payments to Other Creditors	706.060
Notification to Attorney General	706.070
Retention of Legal Documents	706.080
Evaluation of Collection Program	706.090
Reporting Extraordinary Situations or Technical Collection Problems	706.092
INSTALLMENT PAYMENT PROPOSAL GUIDELINES	707.000
Short Term Payment Proposal Guidelines	707.010
Standard Expense Levels for Long Term Payment Plans	707.020
Installment Payment Agreements — Termination	707.021
Installment Payment Agreement — Administrative Review of Termination	707.022
Allowable Expenses — Long Term Payment Plans, Definitions	707.030
Guidelines for Acceptance of Long Term Payment Plans	707.040
Analysis, Substantiation, and Verification of Income and Expenses — Long Term Payment Plans	707.050
Necessary Expenses, Long Term Payment Plans	707.060
Conditional Expenses, Long Term Payment Plans	707.070
TAXES COLLECTED BY OTHER AGENCIES	709.000
Vehicle, Vessel or Mobilehome Use Tax Collections	709.020
Department of Housing and Community Development Mobile Home Registration Information	709.030
Mobilehome Dealer Report of Sale Books	709.040
SOURCES OF LIABILITY AND WHEN TO PROCEED	712.000
Sources of Liability	712.010
When to Proceed on Self-Assessed Liabilities	712.020
When to Proceed on Board-Assessed Liabilities	712.030
Additional Uses of the Form BT-1271, Miscellaneous Change Order	712.041
INTERDISTRICT AND INTRADISTRICT TRANSFER OF COMPLIANCE ASSIGNMENTS	721.000
General	721.010
Procedure for Making Referral	721.020
Control of Assignment by Referring District	721.030
Clearance of Assignment by Referring District	721.040
Responsibility of Receiving Districts	721.050
Reassignment by Receiving District	721.060
District Responsibility — Determination Billings	721.070
Transfer of Revoked Accounts	721.080

COMPLIANCE POLICY AND PROCEDURES MANUAL

TABLE OF CONTENTS — CONTINUED

PARTNERSHIP COLLECTIONS	724.000
General	724.010
Liability of Partners	724.020
Non-Partner Claims	724.025
Limited Partners	724.030
Innocent Spouse	724.050
SUCCESSOR'S LIABILITY	727.000
Policy Regarding Collection from Successors	727.010
Liability Secured by Surety Bond	727.020
Surety Bond on Successor's Account	727.030
Successor's Liability as a Tax	727.040
Successor Billings	727.050
Amounts Not Due or Delinquent at Time of Sale	727.060
Successor's Liability Restricted to Location Purchased	727.070
Purchase of Fixtures and Equipment or Part of a Business	727.080
Consideration in a Form Other Than Money	727.090
Penalty and Interest — Successor's Liability	727.100
Purchase Money Deposited in Escrow	
Does Not Relieve a Successor	727.110
Period Within Which to Establish Successor's Liability	727.120
Headquarter's Responsibility — Successor Billings	727.130
Districts' Responsibility — Successor Billings	727.140
CORPORATE COLLECTIONS	730.000
General	730.010
Requirements to Qualify as a Corporation	730.020
Incorporation Without Notification to the Board	730.030
Incorrect Corporate Registration	730.035
Unpaid Loans	730.045
Unlawful Distributions	730.050
OUT-OF-STATE COLLECTIONS	733.000
General	733.010
Amount of Liability	733.020
Out-of-State District Action	733.030
Out-of-State District Collection Responsibility	733.040
Special Procedures Section Authority and Responsibility	733.050
Notification of Action to Districts	733.060
NOTICE TO WITHHOLD — FORMS BT-465	736.000
General	736.010
Service of Notice — Form BT-465	736.020
Release of Notices to Withhold and Levy	736.025
Refusal of Personal Service of Form BT-465	736.030
Report of Assets Held	736.040
Assets to be Held by a Person Served Form BT-465	736.070
Service of Form BT-465 on Joint Bank Accounts	736.080
Effective Period of Form BT-465	736.090
Service of Form BT-465 Creates No Lien	736.100
Service of Form BT-465 to Reach Reserve Accounts	736.110
Service of Form BT-465 on Employers	736.120
District Office Controls — Form BT-465	736.130
Unauthorized Transfer of Assets	736.140

COLLECTIONS

TABLE OF CONTENTS — CONTINUED

Service of Form BOE-465 to Reach Community	
Interest of Taxpayer in Spouse's Account	736.150
Community Property and Separate Property	736.160
Liability of Separate and Community Property for Debt	736.165
WARRANTS AND LEVIES	742.000
General	742.010
Interest Accruals on Collections by Warrant	742.020
Issuance of Warrants and Instructions	742.030
Request for Warrant	742.040
Advance Payment of Fees and Expenses	742.050
Protective Bids — Motor Vehicle Warrant Procedure	742.060
Cigarette Tax Law Warrants	742.070
Statement of Costs Required	742.080
Costs as an Obligation of the Taxpayer	742.090
ALCOHOLIC BEVERAGE LICENSE	
SUSPENSIONS AND TRANSFERS	748.000
Suspension of Alcoholic Beverage License	
For Failure to File or Pay Sales & Use Taxes	748.005
Suspension of Alcoholic Beverage License	
For Failure to Renew a Surety Bond	748.006
Withhold of Transfer — Alcoholic Beverage License	748.010
Types of Liquor Licenses Subject to Withholds	748.020
Form Letters Used in the Withhold Process	748.030
Transfer Withholds	748.040
Withhold, Demand and Release Procedure	748.050
District Office Responsibility	748.060
Miscellaneous Information — Liquor License Withhold	748.070
Reminder to the District Offices — Liquor License Withholds	748.080
Bankruptcies Involving Liquor Licenses	748.090
Escrows	748.100
Installments — Liquor License Withholds	748.110
Payment for Release of Withhold — Liquor License	748.120
Internal Revenue Seizure and Sale — Liquor License	748.130
ABC Daily Transmittals	748.140
REVOCATION	751.000
General	751.010
Reasons for Revocations	751.020
Initiation of Revocation Action	751.030
Balance Revocation Requests	751.040
Minimum Amounts	751.045
Hearing Notices	751.050
Effective Date of Revocations	751.060
Effect of Revocation	751.070
Revocations — Initial Clearing Process	751.075
Prosecutions, Operating After Revocation	751.080
Conditions of Reinstatement	751.090
Reinstatements After Revocation — Fees	751.100
Reinstatement — Forms Required	751.110
Payments Received During Revocation	751.120
Inoperative Revocations	751.130
Form Letters to Suppliers of Revoked	
Accounts and Swap Meet Operators	751.140
Pre-prosecution Hearing	751.150

COMPLIANCE POLICY AND PROCEDURES MANUAL

TABLE OF CONTENTS — CONTINUED

BANKRUPTCIES, ASSIGNMENTS AND PROBATES	754.000
General	754.010
Glossary of Bankrupt Terms	754.020
Obtaining Information and Reporting to	
HQ Special Procedures Section	754.030
Procedure When Audit is to be Made	754.040
Procedure When No Audit is to be Made	754.050
Procedure When Pre/Post Petition	
(Split) Returns Not Yet Filed	754.055
Disposition of Security	754.060
Final Claim Dates, Bankruptcies	754.070
Final Claim Dates — Assignments	754.080
Final Claim Dates — Probate	754.090
Suspension of Collection Effort	754.100
Notification to Proceed with Collection	754.110
Debtor in Possession	754.120
Bankruptcy Reform Act of 1994	754.125
Penalty and Interest, Assignment and Probate Cases	754.130
Penalty and Interest, Bankruptcy Cases	754.140
Taxes Discharged in Bankruptcy	754.150
Application of Tax on Sales Ordered by Federal Courts	754.155
Filing of Emergency Bankruptcy Claims by the District Offices	754.160
Bankruptcy Notices Centralization	754.170
Imprint of Legal Status on Each	
Accounts Receivable Liability Item	754.180
Bankruptcy Proceedings — Valid Service Upon the Board	754.190
Application of Payments Received in Response to Claims	754.200
Post-Confirmation Date Actions on Chapter 11 Bankrupt Accounts	754.220
NOTICES OF STATE TAX LIENS,	
ABSTRACTS OF JUDGMENT AND LIENS	760.000
General	760.010
Limitation Periods for Summary Procedures	760.020
Type of Recordation Allowed by Statute	760.030
Responsibility for Recording and Filing Liens	760.040
Extensions of Liens	760.050
Policy and Minimum Amounts — Notice of State Tax Lien	760.060
Requests to Withhold Recording or Filing	760.070
Priority of Liens	760.080
Homestead Exemptions	760.100
Declared Homestead	760.110
Homestead Exemption (Automatic)	760.120
Intervenor Action	760.130
Information Necessary	760.140
Collection Actio to Continue	760.150
Reports to the District Office	760.160
Action When Full Payment Received	760.170
District Office Follow-Up	760.180

COLLECTIONS

TABLE OF CONTENTS — CONTINUED

RELEASES, PARTIAL RELEASES AND

SUBORDINATION OF LIENS 763.000

General	763.010
Routine Releases of Liens	763.020
Requests for Releases of Liens	763.030
Payments by Personal Check — Release of Lien	763.040
Release of Liens Acquired Through Erroneous Recordings	763.050
Subordination of Liens	763.060
Partial Releases of Liens	763.070
Releases of Liens When Board Records are Destroyed	763.080

COLLECTION FROM SURETIES 766.000

Effective Periods and Liability	766.010
Notification to Sureties	766.020
Demands on Sureties, District Recommendations	766.030
Demands on Sureties, Corporate Accounts	766.035
Interest Charges on Demands	766.040
Application of Payments from Sureties	766.050
Limitation Periods for Demands	766.070
Demands Involving More Than One Surety	766.080
Collection from Guarantors	766.090

OFFERS IN COMPROMISE 772.000

General	772.010
Processing of Offers	772.020

PREDECESSOR'S LIABILITY FOR SUCCESSORS' TAX 775.000

General	775.010
Dual Determinations Against Predecessor for Successor's Liability	775.015

FIELD COLLECTIONS — RECEIPTS 778.000

Receipts, Form GA-602	778.010
Endorsement of Checks	778.020
Receipt Preparation	778.030
Overnight Retention of Funds — Field Representative	778.040
Lost or Stolen Receipt Books	778.050

ACCOUNTS RECEIVABLE, SPECIAL MAILING 781.000

General	781.010
District Responsibility and Procedure	781.020

MISCELLANEOUS 799.000

Reward Program	799.005
Advice of Payment, Form BT-424	799.010
Video Display Printout as Payment Transmittal Document	799.015
Billings Used as Transmittal Forms	799.020
Standard Rule for Application of Payment	799.030
Example of Billing Used as Transmittal Form	799.040
See Section 842.080	799.045
Subpoenas Duces Tecum	799.050
Revocations — Initial Clearing Process	799.060
Mobilehome Dealer Report of Sales Books	799.080
Controlled Substances	799.090

COLLECTIONS

CHAPTER SEVEN

COLLECTIONS

700.000

GENERAL STATEMENT ON COLLECTIONS

703.000

IMPORTANCE OF COLLECTION ACTIVITY

703.010

All of the functions performed by the Board are directed toward the collection of all amounts due under the revenue laws the Board administers. An efficient and aggressive collection program is essential. The primary objective of the collection program is to collect the greatest amount possible in the shortest period of time with the least amount of effort.

To achieve the highest possible degree of efficiency in the collection program, there must be a thorough familiarity with those provisions of the laws which pertain to collections and a proper control of collection assignment at the district office level.

Prompt, aggressive, collection action is necessary, especially on the initial demand billings (see Subsection **712.000**). Yet, each taxpayer should be given a chance to make payment voluntarily except in situations where delay will jeopardize the chance of collection.

Failure to take prompt and aggressive action encourages some taxpayers to procrastinate when future payments become due since our failure to act gives the impression little will happen except the taxpayer will be required to pay additional penalty and interest.

When promises are not kept, the taxpayer should be contacted promptly and advised appropriate remedies will be used unless payment is made immediately. Failure to follow-up promptly with aggressive action impresses the delinquent taxpayer with the ease with which he/she can delay or avoid payment.

COLLECTION ASSIGNMENT CONTROL

703.020

Control of collection assignments is a responsibility of each compliance supervisor, branch office supervisor, and district administrator (see Subsection 799.070).

COMPLIANCE POLICY AND PROCEDURES MANUAL

CONTACT AND INTERVIEW

706.000

EXAMINATION OF FILE

706.010

Before making contact with the taxpayer, thoroughly review the taxpayer's file to have available all details pertinent to your collection case.

The basis for the liability must be thoroughly understood in order to answer any questions the taxpayer may have regarding the amounts due. The taxpayer's past record should be studied to determine what to anticipate and how to deal with the taxpayer. The file might also disclose information on assets, sources of income, financial status, as well as other general information.

Any attempt to discuss payment of a liability with a taxpayer without having all of the details of the matter will almost always create an unfavorable impression and have a direct influence on the success of the interview.

COLLECTION INTERVIEW

706.020

An important part of any collection effort is the contact and interview with the delinquent taxpayer. To a considerable degree, collection productivity will be controlled by the manner in which the interview is conducted. Whether the interview is conducted in the Board office or elsewhere, there is no basic difference in the way the interview should be handled.

The attitude should never be overbearing or unbusinesslike. While extending to the taxpayer proper courtesies, the interviewer must be firm and direct. To create an impression of inexperience, uncertainty or indifference will encourage the taxpayer to attempt to postpone payment through excuses or insincere promises. If this type of impression is created, the best that can usually be expected is small, irregular payments made only after considerable delay.

The impression the representative should create is one that will cause the taxpayer to realize the interviewer is a trained professional, fully familiar with the matter, well-informed on the provisions of the law, and will follow through, if necessary, to compel payment. If the representative is successful in this regard, collections will reflect this success.

CONDUCTING THE INTERVIEW

706.030

The representative should always take command of the situation at the outset. The representative should impress the taxpayer with the seriousness of failing to pay taxes and apprise the taxpayer of the consequences without disclosing contemplated action to be taken if necessary. It is never appropriate for Board employees to offer any advice regarding filing a petition in bankruptcy or any other legal advice other than interpretation of the tax laws administered by the Board.

If payment cannot be obtained, direct and leading questions should be asked to secure as much information as possible regarding sources of income, available assets and ability to pay. The facts developed should always be recorded for future reference, for reporting purposes, or for the use of another person should reassignment of the case become necessary.

COMPLIANCE POLICY AND PROCEDURES MANUAL

CONDUCTING THE INTERVIEW

(CONT.) 706.030

The object of any contact is to obtain full payment of the liability immediately. If this cannot be done, the representative should attempt to obtain a substantial payment on account or at least a definite promise of payment at a very early date. When a promise of full or substantial payment is obtained, the representative then has an obligation to timely follow up to make sure payment is made. Failure to follow-up timely will send an unfavorable message to the taxpayer. If payment is not made as promised, the representative must attempt to make the taxpayer fully understand payment is expected as promised and failure to make payment invites more direct action. If, during the interview, reference is made to a billing which is the result of an estimated determination made by the district audit staff, the district audit section should be informed of the proceedings.

UNCOOPERATIVE TAX DEBTORS

706.040

When contact is made with an uncooperative or belligerent taxpayer, avoid allowing this to adversely influence the manner of handling the situation. Be careful not to assume a similar attitude toward the taxpayer, since to do so, will result in an unproductive interview. In a firm businesslike manner, the situation should be clearly explained. The taxpayer should be informed of (1) the basis for the liability; (2) the taxpayer's rights; and (3) payment must be made to forestall summary action. The taxpayer should not be given detailed information of the action which will be taken should payment not be made.

If the taxpayer remains adamant in this uncooperative attitude, waste no further time in trying to convince the taxpayer voluntary payment should be made and notify your supervisor of the situation. Your approach to collections should now be shifted to one of compelling payment through appropriate action.

INABILITY TO PAY IN FULL

706.050

Whenever a taxpayer indicates an inability to pay in full the amount due, explain the advantages of making immediate full payment. Points to be stressed are the possible saving of penalty, the saving of interest, effect on credit standing caused by the recording of a Notice of State Tax Lien or Abstract of Judgment, or the loss of personal property. Although not necessarily an advantage to the taxpayer, the fact should be stressed the Board is not in the loan business and arrangements for a loan should be made through a legitimate lending institution to clear the liability.

PAYMENTS TO OTHER CREDITORS

706.060

Under no circumstances should a taxpayer be allowed to forego payments to the Board in order to make payments to other creditors unless the payments are necessary for the health and well-being of the taxpayer or the taxpayer's family.

If there is a refusal to pay on the basis of pressure from other creditors, the taxpayer should be informed summary action will be taken. Since the Board is also a creditor, the taxpayer should be made to realize payments to the Board are equally as important as payments to others.

COLLECTIONS

NOTIFICATION TO ATTORNEY GENERAL

706.070

Some collection accounts are referred to the Attorney General for action. The Attorney General acts as an attorney for the Board and, in order to maintain a good working relationship between attorney and client, the Attorney General's Office must be notified of any change in status of an account previously referred.

The districts will maintain controls so the Headquarters Special Procedures Section is notified of any changes in the accounts referred for forwarding by the section to the Attorney General. Payments on account on referred cases will be flagged by Headquarters Special Procedures Section for notification to the Attorney General.

RETENTION OF LEGAL DOCUMENTS

706.080

Whenever legal documents or documents which could have legal ramifications, such as assignments, etc., are received in the district offices, whether by mail, through service, or by acceptance by an employee, such documents should be forwarded immediately to the Headquarters Special Procedures Section for review and possible referral to the legal staff and the Attorney General's Office for appropriate action. (The above statement should not be construed to conflict with the instructions contained in Section 7700 of the Board of Equalization Administrative Manual which covers service for legal process, summons, restraining orders, subpoenas, etc.)

EVALUATION OF COLLECTION PROGRAM

706.090

The supervisor of the Headquarters Compliance Planning and Evaluation Section has the responsibility, delegated by the Compliance Program Manager, to evaluate the effectiveness of the statewide collection program and to determine whether the results of the efforts of the districts meet the projected work goals of Sales and Use Tax Department Management.

REPORTING EXTRAORDINARY SITUATIONS OR TECHNICAL COLLECTION PROBLEMS

706.092

The supervisor of the Headquarters Special Procedures Section must be kept informed of extraordinary situations or technical problems on collection cases. Where questions of a legal nature are encountered regarding application of procedures or law to collection cases, the Headquarters Special Procedures Section should first be contacted. This will prevent duplication of legal questions submitted to attorneys and provide a level of uniformity consistent with effective collection work. The supervisor of the Headquarters Special Procedures Section will keep the supervisor of the Headquarters Compliance Planning and Evaluation Section informed of any of these occurrences for inclusion in the Collection Program evaluation.

INSTALLMENT PAYMENT PROPOSAL GUIDELINES**707.000****SHORT TERM PAYMENT PROPOSAL GUIDELINES****707.010**

Short term payment proposals may be considered for active account liabilities where the individual, corporation, limited liability company (LLC) or limited partnership, over the previous three years or since the start date of the business, has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required (with the exception of the current liability). In reviewing past history, an individual's record under related accounts as an individual, partner or corporate officer should be considered. If a taxpayer's payment history is unsatisfactory, an exception may be granted at the discretion of the district. The primary consideration in accepting a short term payment plan is whether the plan is in the best interests of the state. Staff shall have full discretion in deciding to accept or deny a short term payment proposal, based on the taxpayer's past payment history, the merits of the proposal or the viability of the business. Staff must document justification in ACMS Notes.

Short term payment plans should generally not exceed eight weeks in length. Payment should generally be made on a weekly basis. Exceptions to the eight week maximum must be approved by a supervisor and noted on ACMS notes with justification. Current tax returns and prepayments must be filed and paid timely as a condition of the payment plan.

A complete financial statement (Form BOE-403-E, *Statement of Financial Condition*), including bank statements (both personal and business), income tax returns, accounts receivable listings (including names, addresses, phones numbers and amounts owed), income and expense (or profit and loss) statements, balance sheets, and cash flow statements may be required. An individual may be required to submit information as listed on Form BOE-58, *Installment Payment Proposal — Need Info*. A corporation may be required to submit information as listed on a Form BOE-60, *Installment Payment Proposal — Need Corporate Info*. Additional information and verification may be required as deemed necessary by the district. Weekly payments should not be forestalled while financial information is compiled by the tax debtor.

The tax debtor should be required to utilize any available lines of credit, including credit card cash advances or a bank loan, to pay the liability in part or in full.

Upon acceptance of a short term payment proposal, a Form BOE-407, *Installment Payment Proposal*, should be completed and provided to the tax debtor for a signature, or a Form BOE-905, *Confirmed Payment Schedule*, should be provided to the tax debtor. If a lien has not already been filed for the period/s in question, a conscious decision must be made by staff to either withhold the filing of a lien or advise the tax debtor of the possibility of a lien filing. Staff must document the decision and basis in ACMS Notes. ACMS DocGen will prompt the user to include either a lien warning blurb or a lien withhold blurb on the Form BOE-407. The tax debtor should be verbally advised during the installment payment proposal negotiation when a lien may be filed despite the installment payment agreement. Even if a tax debtor is likely to complete the payment plan before returning the Form BOE-407, staff should send the BOE-407 to document the payment proposal.

STANDARD EXPENSE LEVELS FOR LONG TERM PAYMENT PLANS

707.020

The following standard expense level guidelines should exclusively be applied to closed accounts and to open accounts which only have an audit liability. Long term payment plans are generally for a period of eight weeks or longer. Active, self-declared liability payment proposals are defined as short term payment proposals, and are covered above in section **707.010**.

Before accepting any proposal, the financial condition of the tax debtor will be thoroughly investigated. A complete financial statement in an acceptable form will be obtained (Form BOE-403-E, *Statement of Financial Condition*, is available for use). An individual may be required to submit information as listed on a Form BOE-58, *Installment Payment Proposal — Need Info*. A corporation may be required to submit information as listed on a Form BOE-60, *Installment Payment Proposal — Need Corporate Info*. If a tax debtor has cash equal to the tax liability, immediate payment should be demanded. Otherwise, unencumbered assets, interests in estates and trusts, and lines of credit from which money may be borrowed to make payment should be considered. In addition, a tax debtor's ability to obtain an unsecured loan should be considered. If there are assets with value and a tax debtor is unwilling to raise money from them, enforcement action should be taken. If there appears to be no borrowing ability, the tax debtor should be asked to defer payment of certain other debts if that would make possible paying the liability in full or in larger installments than otherwise possible. We should not request a payment deferral that will cause the tax debtor to lose assets and thereby jeopardize our ability to collect the liability.

The terms of any proposal should provide for payments commensurate with the ability to pay (equal to monthly disposable income). Installment payments should be paid on at least a monthly basis unless there are extenuating circumstances present which make it advantageous to accept payments on a less frequent basis.

INSTALLMENT PAYMENT AGREEMENTS — TERMINATION

707.021

If a tax debtor defaults on the terms of a documented installment agreement, a Form BOE-407-T, *Installment Payment Agreement — Notice of Termination* must be sent to the taxpayer immediately. Revenue and Taxation Code Section 6832(b) requires that this notice must be given to the tax debtor if staff intends to terminate the installment payment agreement and continue with collection action. Default of the installment payment agreement is grounds for termination, and may include missed or late installment payments, delinquent or partial remittance tax returns, or failure to disclose assets or income on a financial statement. Other reasons for termination could include a failure to increase payment levels as requested based on new assets or income, or a failure to comply with a review of financial status. An additional audit liability may be a reason to review the financial status of a tax debtor.

Upon mailing of the notice of termination, staff must wait 15 calendar days to allow the tax debtor to file a written request for an administrative review before initiating collection action. Once the 15 days has elapsed, collection action is not required to be halted while an administrative review is scheduled or commencing. However, if the tax debtor provides a reasonable explanation why an administrative hearing can not be set within the 15-day period, staff should administratively extend the grace period before commencing with collection action unless there is a compelling urgency for such action to protect the State's interests.

INSTALLMENT PAYMENT AGREEMENT — ADMINISTRATIVE REVIEW OF TERMINATION

707.022

If a tax debtor requests an administrative review, one shall be provided at the tax debtor's earliest convenience at the district or branch office of the tax debtor's choice. Every effort shall be made to accommodate the tax debtor and allow a review prior to the lapse of the 15-day grace period as mentioned in section **707.021** above.

The administrative review shall be informal, and the review officer shall be a Tax Compliance Supervisor at the district or branch office. When possible, the review officer shall not be the immediate supervisor of the employee who handled the account or issued the Installment Payment Agreement — Notice of Termination. The review officer shall give the tax debtor sufficient advance notice of the time scheduled for the administrative review, either verbally or in writing, and document the contact in ACMS notes. Form BOE-407-AR, Administrative Hearing/Review Notice is available on ACMS DocGen for this purpose. The tax debtor shall be advised that the review will be limited to the issue of the default of the installment payment agreement, and that relevant documentation shall be collected for presentation at the review. The review officer shall issue a written decision within 5 calendar days after the administrative review.

ALLOWABLE EXPENSES — LONG TERM PAYMENT PLANS, DEFINITIONS

707.030

1. *Allowable expenses:* There are two types of allowable expenses — necessary and conditional.

A. *Necessary expenses* must meet the necessary expense test. The necessary expense test is a general rule which states that the expense must provide for a tax debtor's and his or her family's health, welfare or production of income. In some situations, the Board representative will need to make a judgment call to determine if the expense qualifies as necessary. The expenses must be reasonable in amount. The total necessary expenses establish the minimum a tax debtor and family need to live. There are three types of necessary expenses:

- 1) *Statewide standards.* These establish standards for reasonable amounts for six necessary expenses. Standards for food, housekeeping supplies, apparel and services, and personal care products and services have been originally developed by the Internal Revenue Service based on the Federal Bureau of Labor Statistics, Consumer Expenditure Survey 1994-95, and adjusted for inflation to the year 1996. The standards have been stratified by income level. As income levels increase, the percentage of income provided for these expenses decreases. The standard level for miscellaneous expenses was developed by the Board.
- 2) *Local standards.* These establish standards for three necessary expenses, housing, utilities and transportation, based on local economic factors.
- 3) *Other.* Other expenses may be allowed if they meet the necessary expense test. They must also be reasonable in amount. Since there are no statewide or locally established standards for determining reasonable amounts, the Board employee responsible for the case must determine whether the expense is necessary and the amount is reasonable. A common example is child/dependent care.

B. *Conditional expenses.* These expenses do not meet the necessary expense test. However, they are allowable if the tax liability, including projected interest and penalty accruals, can be paid in full within three years.

2. *Three year rule.* This rule establishes a time limit. For substantiated conditional and excessive necessary expenses to be allowed, the tax liability, including projected interest and penalty accruals, must be fully paid within three years.

COMPLIANCE POLICY AND PROCEDURES MANUAL

ALLOWABLE EXPENSES — LONG TERM PAYMENT PLANS, DEFINITIONS

(CONT.) 707.030

3. *One year rule.* This rule establishes a time limit. It provides the tax debtor up to one year to modify or eliminate excessive necessary or not-allowable conditional expenses if the tax liability, including projected interest and penalty accruals, cannot be fully paid within three years. *This period can be adjusted from one to twelve months based on the nature of the expense.*

4. *Ninety day rule.* Payments on unsecured debts will not be allowed if omitting them would permit the tax debtor to pay in full within 90 days. Minimum payments may be allowed on credit cards to preserve a tax debtor's credit rating.

5. *Reasonable amount.* For certain specified expenses, the reasonable amounts are provided by the Statewide Standards and the Local Standards. If the expense falls under Other Necessary or Conditional Expenses, the Board employee responsible for the case will determine what amount is reasonable from any information available (e.g., comparable costs for child/dependent care for the region). If the tax liability, including projected interest and penalty accruals, can be fully paid within three years, the Board will allow a tax debtor's claimed expenses if the expenses fall within the statewide standard limits, or if the tax debtor substantiates each expense.

6. *Disposable income.* This is the amount of income that remains after allowable expenses are deducted from gross income, including deductions required by law to be withheld, or any child support or alimony payments that are made under a court order or legally enforceable written agreement. Amounts required by law to be withheld include, but are not limited to, Federal and State taxes, FICA contributions, Medicare contributions, and wage garnishment payments. Disposable income is the amount available to apply to the tax liability.

GUIDELINES FOR ACCEPTANCE OF LONG TERM PAYMENT PLANS

707.040

The following procedures are provided as general guidelines. As always, Board representatives should use professional judgment and tact in dealing with tax debtors on payment proposals.

Necessary expenses, if reasonable in amount, should generally be allowed. If the necessary expense is in excess of the established standards, it may be allowed if the tax liability, including projected interest and penalty accruals, can be paid within three years (Three year rule). If the liability can not be paid within three years, the tax debtor should be given up to one year to adjust for the not-allowable amount. After this adjustment period, the tax debtor should be required to increase the installment payment by the difference (One year rule). A list of typical necessary expenses can be found in Section **707.060**. Necessary expense charts are to be used as **maximum** guidelines. *If the actual expense, as shown via documentation, is less than the maximum limit, the actual amount should be used.*

Conditional expenses are allowable if a tax liability can be fully paid within three years through an installment agreement. If the liability can not be paid within three years, the one year rule should be applied, and the tax debtor should be told to make the necessary adjustment. A list of typical conditional expenses can be found in Section **707.070**. Conditional expense charts are to be used as **maximum** guidelines. *If the actual expense, as shown via documentation, is less than the maximum limit, the actual amount should be used.*

COLLECTIONS

GUIDELINES FOR ACCEPTANCE OF LONG TERM PAYMENT PLANS

(CONT.) 707.040

Allowable expense guidelines should only be applied to closed accounts and for open accounts which only have an audit liability. In the case of an audit liability, the tax debtor should be questioned on whether the accounting practices of the business have been corrected to prevent future audit liabilities of a similar nature. This is particularly true of payment proposals on audits with fraud or negligence penalties.

All proposals in excess of 90 days duration must be reviewed by a supervisor and approved by the district administrator or his/her designee. Upon acceptance of a long term payment proposal, a Form BOE-407, Installment Payment Proposal, should be completed and provided to the tax debtor for a signature. If a lien has not already been filed for the period/s in question, a conscious decision must be made by staff to either withhold the filing of a lien or advise the tax debtor of the possibility of a lien filing. ACMS DocGen will prompt the user to include either a lien warning blurb or a lien withhold blurb to the Form BOE-407. The tax debtor should be verbally advised during the installment payment proposal negotiation when a lien may be filed despite the installment payment agreement.

Approved BOE-407 payment plans must be reviewed each twelve month period (minimum) and recorded in ACMS Notes. This review should include, as a minimum, an asset check to verify the tax debtor's current income, a request for a current income tax return and a review of the original BOE-403 to determine if any expenses have terminated (for example, a vehicle loan may have been paid off or a dependent may have completed schooling within the last year).

ANALYSIS, SUBSTANTIATION, AND VERIFICATION OF INCOME AND EXPENSES — LONG TERM PAYMENT PLANS

707.050

A tax debtor may generally be allowed to claim expenses up to the statewide standard and local standard limits without substantiation. If standard limits are not allowed, the reasons must be documented in ACMS. Two standards that require substantiation are the vehicle ownership costs and housing expenses. Tax debtors are required to substantiate vehicle ownership costs since they may not be currently paying for a loan or lease of a car. Tax debtors must show documentation for housing since costs vary greatly and since a residence may be fully paid for. If a tax debtor claims an amount higher than the statewide or local standard for a single expense, then *every* expense under the statewide or local standards must be substantiated before consideration will be given. *In any case where the maximum limit exceeds the actual amount, the actual amount should be used.*

A tax debtor should also be required to substantiate expenses which are categorized as other necessary and conditional expenses. For substantiation, proof could include items like pay stubs, income tax returns, bank statements, credit card vouchers, rent/lease receipts, payment coupons, court orders and contracts. Canceled checks should not generally be accepted as proof of an expense.

Certain items which are traditionally listed as necessary expenses should not be allowed if they do not meet the necessary expense test. Examples include additional vehicles (more than one), premium cable television programming, long distance telephone charges and charitable contributions. These items should not be allowed unless it can be shown that the expenses are necessary for the tax debtor's and his or her family's health, welfare or production of income, and that they are reasonable in amount.

Compare income to expenses. If expenses exceed income, the tax debtor should be required to provide an explanation. If the stated income is less than a recent income tax return, request an explanation and documentation.

COMPLIANCE POLICY AND PROCEDURES MANUAL

ANALYSIS, SUBSTANTIATION, AND VERIFICATION OF INCOME AND EXPENSES — LONG TERM PAYMENT PLANS

(CONT.) 707.050

When review of a tax debtor's assets has given no obvious solution for liquidating the liability, the income and expenses should be analyzed to determine the amount of disposable income available to apply to the tax liability. Expense analysis is necessary only if collection is not possible from available assets.

Tax debtors who own homes should provide documentation showing the monthly payment amount, purchase price, date of purchase, the principle amount due, and proof that property insurance and taxes are not being paid via an impound account with the lender. This last item is required to assure that taxes and insurance are not claimed twice, once under the mortgage payment and once in monthly out-of-pocket expenses. The same statewide standard levels should be applied to tax debtors who rent a residence.

In discussing expenses with tax debtors, it should be emphasized how much is expected from them rather than how they are expected to spend their money. For example, if tax debtors have excessive necessary or not-allowable conditional expenses, they should not be told that they cannot own a boat or a summer cabin. Instead, tax debtors should be advised that they are expected to pay an amount equal to that which is claimed as an excessive necessary expense or a not-allowable conditional expense. Tax debtors should be responsible for determining what modifications or eliminations must be made in their budgets in order to pay the tax liability. This is especially true for issues such as excessive day care expenses.

If a tax debtor has incurred an expense which is excessive or does not pass the necessary expense test after a tax liability becomes final, the three year rule and the one year rule may not apply. For instance, if a luxury automobile was purchased after a tax liability billing was issued, the tax debtor may be required to pay the Board an amount equal to the disposable income and the portion of the automobile expense which exceeds the standard limits.

In cases where a tax debtor is asked to make adjustments based on the one year rule, special considerations may become necessary. For example, when deciding whether a tax debtor should be required to pay the Board an amount equal to excessive housing expenses, other factors should be considered such as the increased cost of transportation to work and school, the tax consequences of a lost interest deduction, lease termination fees and the cost of moving to a new residence.

When analyzing expenses for a tax debtor who has a business, make sure that business expenses are not also included under personal expenses.

If a tax debtor defaults on a payment arrangement, then the tax debtor must generally catch up on the missed payment/s to re-enter the payment proposal. Exceptions must be documented in ACMS Notes. A written warning should be provided to the tax debtor after the first default indicating that future defaults will not be subject to the same exception.

If a comprehensive review of a tax debtor's financial statement shows that there is currently no disposable income, the account can be placed in the ACMS Wait 180 State for a period of 180 days with supervisory approval. This is advisable if the tax debtor or the tax debtor's spouse is looking for a new job, or if an expense such as a car loan is due to be paid in the near future. A separate follow-up can be set for an earlier date if necessary.

COLLECTIONS

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS

707.060

Statewide Standards:

1997 Maximum Monthly Standards for Food, Clothing and Other Items
Summary (Chart 1)

Total Gross Monthly Income	1 Person	2 Persons	3 Persons	4 Persons	Each Add'l Person
less than \$ 830.00	\$ 336.00	\$ 453.00	\$ 563.00	\$ 704.00	add \$ 125.00
\$ 831 to \$ 1,249	\$ 382.00	\$ 510.00	\$ 627.00	\$ 740.00	add \$ 135.00
\$ 1,250 to \$ 1,669	\$ 421.00	\$ 610.00	\$ 714.00	\$ 776.00	add \$ 145.00
\$ 1,670 to \$ 2,499	\$ 510.00	\$ 662.00	\$ 757.00	\$ 805.00	add \$ 155.00
\$ 2,500 to \$ 3,329	\$ 537.00	\$ 744.00	\$ 835.00	\$ 896.00	add \$ 165.00
\$ 3,330 to \$ 4,169	\$ 600.00	\$ 802.00	\$ 917.00	\$ 1,029.00	add \$ 175.00
\$ 4,170 to \$ 5,829	\$ 746.00	\$ 927.00	\$ 985.00	\$ 1,133.00	add \$ 185.00
\$ 5,830 and over	\$ 958.00	\$ 1,194.00	\$ 1,352.00	\$ 1,424.00	add \$ 195.00

1997 Maximum Monthly Standards for Food, Clothing and Other Items

Detailed Breakdown (Chart 2)

Total Gross Income for One Person	Less than \$830	\$831 to \$1,249	\$1,250 to \$1,669	\$1,670 to \$2,499	\$2,500 to \$3,329	\$3,330 to \$4,169	\$4,170 to \$5,829	\$5,830 and over
Food	\$163.00	\$191.00	\$206.00	\$247.00	\$260.00	\$313.00	\$412.00	\$439.00
Housekeeping Supplies	\$18.00	\$20.00	\$21.00	\$25.00	\$26.00	\$28.00	\$33.00	\$41.00
Apparel & Services	\$41.00	\$50.00	\$72.00	\$115.00	\$122.00	\$124.00	\$161.00	\$322.00
Personal Care	\$14.00	\$21.00	\$22.00	\$23.00	\$29.00	\$35.00	\$40.00	\$56.00
Miscellaneous	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00
Total	\$336.00	\$382.00	\$421.00	\$510.00	\$537.00	\$600.00	\$746.00	\$958.00

Detailed Breakdown (Chart 2)

Total Gross Income for Two Persons	Less than \$830	\$831 to \$1,249	\$1,250 to \$1,669	\$1,670 to \$2,499	\$2,500 to \$3,329	\$3,330 to \$4,169	\$4,170 to \$5,829	\$5,830 and over
Food	\$219.00	\$267.00	\$337.00	\$351.00	\$408.00	\$421.00	\$496.00	\$611.00
Housekeeping Supplies	\$22.00	\$26.00	\$27.00	\$38.00	\$44.00	\$49.00	\$55.00	\$71.00
Apparel & Services	\$68.00	\$69.00	\$94.00	\$116.00	\$123.00	\$160.00	\$195.00	\$323.00
Personal Care	\$19.00	\$23.00	\$27.00	\$32.00	\$44.00	\$47.00	\$56.00	\$64.00
Miscellaneous	\$125.00	\$125.00	\$125.00	\$125.00	\$125.00	\$125.00	\$125.00	\$125.00
Total	\$453.00	\$510.00	\$610.00	\$662.00	\$744.00	\$802.00	\$927.00	\$1,194.00

Detailed Breakdown (Chart 2)

Total Gross Income for Three Persons	Less than \$830	\$831 to \$1,249	\$1,250 to \$1,669	\$1,670 to \$2,499	\$2,500 to \$3,329	\$3,330 to \$4,169	\$4,170 to \$5,829	\$5,830 and over
Food	\$262.00	\$314.00	\$375.00	\$391.00	\$427.00	\$469.00	\$524.00	\$709.00
Housekeeping Supplies	\$23.00	\$27.00	\$28.00	\$39.00	\$45.00	\$53.00	\$56.00	\$74.00
Apparel & Services	\$106.00	\$109.00	\$129.00	\$138.00	\$168.00	\$197.00	\$198.00	\$354.00
Personal Care	\$22.00	\$27.00	\$32.00	\$39.00	\$45.00	\$48.00	\$57.00	\$65.00
Miscellaneous	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00
Total	\$563.00	\$627.00	\$714.00	\$757.00	\$835.00	\$917.00	\$985.00	\$1,352.00

Detailed Breakdown (Chart 2)

Total Gross Income for Four Persons	Less than \$830	\$831 to \$1,249	\$1,250 to \$1,669	\$1,670 to \$2,499	\$2,500 to \$3,329	\$3,330 to \$4,169	\$4,170 to \$5,829	\$5,830 and over
Food	\$360.00	\$362.00	\$391.00	\$400.00	\$455.00	\$552.00	\$605.00	\$748.00
Housekeeping Supplies	\$34.00	\$35.00	\$36.00	\$44.00	\$47.00	\$55.00	\$58.00	\$75.00
Apparel & Services	\$109.00	\$140.00	\$141.00	\$142.00	\$172.00	\$198.00	\$235.00	\$355.00
Personal Care	\$26.00	\$28.00	\$33.00	\$44.00	\$47.00	\$49.00	\$60.00	\$71.00
Miscellaneous	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00	\$175.00
Total	\$704.00	\$740.00	\$776.00	\$805.00	\$896.00	\$1,029.00	\$1,133.00	\$1,424.00

COMPLIANCE POLICY AND PROCEDURES MANUAL

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS

(CONT. 1) 707.060

Detailed Breakdown (Chart 2)

Total Gross Income for								
More Than Four	Less than\$831 to\$1,250 to\$1,670 to\$2,500 to\$3,330 to\$4,170 to\$5,830							
Persons	\$830	\$1,249	\$1,669	\$2,499	\$3,329	\$4,169	\$5,829	and over
For each additional person, add to the four person total the following amount:								
	\$125.00	\$135.00	\$145.00	\$155.00	\$165.00	\$175.00	\$185.00	
	\$195.00							

Local Standards:

Maximum Monthly Housing and Utilities Allowable Living Expenses for California (Chart 3)*

County	1 or 2 People	3 People	4 or More
Alameda	\$ 1,121.00	\$ 1,291.00	\$ 1,488.00
Alpine	\$ 816.00	\$ 931.00	\$ 1,075.00
Amador	\$ 730.00	\$ 830.00	\$ 959.00
Butte	\$ 641.00	\$ 726.00	\$ 839.00
Calaveras	\$ 762.00	\$ 868.00	\$ 1,002.00
Colusa	\$ 529.00	\$ 594.00	\$ 687.00
Contra Costa	\$ 1,166.00	\$ 1,344.00	\$ 1,549.00
Del Norte	\$ 574.00	\$ 647.00	\$ 748.00
El Dorado	\$ 946.00	\$ 1,085.00	\$ 1,251.00
Fresno	\$ 719.00	\$ 817.00	\$ 944.00
Glenn	\$ 527.00	\$ 592.00	\$ 685.00
Humboldt	\$ 599.00	\$ 676.00	\$ 781.00
Imperial	\$ 625.00	\$ 707.00	\$ 817.00
Inyo	\$ 732.00	\$ 833.00	\$ 962.00
Kern	\$ 751.00	\$ 856.00	\$ 988.00
Kings	\$ 644.00	\$ 730.00	\$ 843.00
Lake	\$ 696.00	\$ 791.00	\$ 914.00
Lassen	\$ 566.00	\$ 638.00	\$ 737.00
Los Angeles	\$ 1,062.00	\$ 1,221.00	\$ 1,408.00
Madera	\$ 702.00	\$ 798.00	\$ 922.00
Marin	\$ 1,400.00	\$ 1,618.00	\$ 1,865.00
Mariposa	\$ 692.00	\$ 786.00	\$ 908.00
Mendocino	\$ 755.00	\$ 860.00	\$ 993.00
Merced	\$ 667.00	\$ 756.00	\$ 874.00
Modoc	\$ 395.00	\$ 436.00	\$ 506.00
Mono	\$ 1,033.00	\$ 1,186.00	\$ 1,368.00
Monterey	\$ 969.00	\$ 1,112.00	\$ 1,283.00
Napa	\$ 975.00	\$ 1,119.00	\$ 1,291.00
Nevada	\$ 891.00	\$ 1,020.00	\$ 1,177.00
Orange	\$ 1,239.00	\$ 1,429.00	\$ 1,648.00
Placer	\$ 1,019.00	\$ 1,171.00	\$ 1,350.00
Plumas	\$ 633.00	\$ 717.00	\$ 828.00
Riverside	\$ 976.00	\$ 1,120.00	\$ 1,292.00
Sacramento	\$ 837.00	\$ 956.00	\$ 1,104.00
San Benito	\$ 1,101.00	\$ 1,267.00	\$ 1,461.00
San Bernardino	\$ 888.00	\$ 1,016.00	\$ 1,172.00
San Diego	\$ 1,061.00	\$ 1,220.00	\$ 1,407.00
San Francisco	\$ 1,108.00	\$ 1,275.00	\$ 1,471.00
San Joaquin	\$ 808.00	\$ 923.00	\$ 1,065.00
San Luis Obispo	\$ 1,015.00	\$ 1,166.00	\$ 1,345.00
San Mateo	\$ 1,314.00	\$ 1,517.00	\$ 1,749.00
Santa Barbara	\$ 1,062.00	\$ 1,221.00	\$ 1,408.00
Santa Clara	\$ 1,278.00	\$ 1,475.00	\$ 1,700.00
Santa Cruz	\$ 1,209.00	\$ 1,394.00	\$ 1,607.00

COLLECTIONS

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS

(CONT. 2) 707.060

<u>County</u>	<u>1 or 2 People</u>	<u>3 People</u>	<u>4 or More</u>
Shasta	\$ 637.00	\$ 721.00	\$ 834.00
Sierra	\$ 551.00	\$ 620.00	\$ 716.00
Siskiyou	\$ 497.00	\$ 556.00	\$ 643.00
Solano	\$ 1,018.00	\$ 1,170.00	\$ 1,349.00
Sonoma	\$ 1,021.00	\$ 1,173.00	\$ 1,353.00
Stanislaus	\$ 767.00	\$ 874.00	\$ 1,009.00
Sutter	\$ 676.00	\$ 767.00	\$ 886.00
Tehama	\$ 524.00	\$ 588.00	\$ 681.00
Trinity	\$ 561.00	\$ 632.00	\$ 730.00
Tulare	\$ 623.00	\$ 705.00	\$ 814.00
Tuolumne	\$ 765.00	\$ 871.00	\$ 1,006.00
Ventura	\$ 1,227.00	\$ 1,415.00	\$ 1,632.00
Yolo	\$ 823.00	\$ 940.00	\$ 1,084.00
Yuba	\$ 550.00	\$ 618.00	\$ 715.00
Utilities	\$ 140.00	\$ 193.00	\$ 218.00

* Verification of Housing Expenses should be obtained in all cases. Standards for owned dwellings include mortgage payments, home equity loans, property taxes and insurance, expenses for property management/security, expenses for maintenance and repairs. Standards for rented dwellings include rent, parking fees, maintenance, renters insurance and other expenses.

Utilities include natural gas, electricity, fuel oil, wood, kerosene, coal, bottled gas, water, garbage and trash collection, sewerage maintenance, basic phone service and other public services. Basic cable television should be included in miscellaneous expenses.

Maximum Allowable Monthly Transportation Expenses (Chart 4)

<u>Allowable Transportation Expenses</u>	<u>No Car</u>	<u>One Car</u>	<u>Two Cars</u>
Automobile Ownership Costs:*		\$335.00	\$604.00
<u>Operating Costs and Public Transportation Costs by Metropolitan Area:</u>			
Los Angeles	\$235.00	\$288.00	\$341.00
San Francisco	\$267.00	\$320.00	\$373.00
San Diego	\$255.00	\$308.00	\$361.00
All Remaining Areas	\$212.00	\$264.00	\$317.00

* Tax debtor must show documentation for a lease or loan on a vehicle to claim ownership costs.

Transportation costs include gasoline, oil, maintenance and repairs, vehicle insurance, registration and license fees, parking fees, towing charges, tolls and automobile service clubs. Transportation costs also can be used to cover public transportation such as fares for mass transit, buses, trains, airlines, taxis, private school buses and boats, provided they pass the necessary expense test

Other Necessary Expenses:

Accounting and legal fees for representation before the Board. Fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health and welfare or production of income). Other accounting expenses and legal fees are not necessary expenses but are conditional expenses and are allowable if the tax liability can be paid in full, including projected interest and penalty accruals, within three years.

COMPLIANCE POLICY AND PROCEDURES MANUAL

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS

(CONT. 3) 707.060

Charitable contributions. These expenses include donations to tax exempt organizations such as: civic organizations, religious organizations (tithing and educational), and medical services or associations. To be necessary, charitable contributions have to provide for the health and welfare of the tax debtor and his or her family or be a condition of employment. Any contributions which do not meet the necessary expense test will be considered as conditional, and may be allowed only if the tax debtor can show a pattern of similar contributions in the past.

Child care. Baby sitting, day care, nursery and preschool. Expenses are necessary if they meet the necessary expense test (health, welfare or production of income). Care should be taken to ensure that only a reasonable amount is allowed. Costs of child care can vary greatly. We should not allow expensive child care if more reasonable alternatives exist. If a portion of a child care expense is disallowed, the tax debtor should not be told to move their child to a cheaper facility. Instead, tax debtors should be advised that they are expected to pay an amount equal to that which is determined to be excessive. Tax debtors should be responsible for determining what modifications or eliminations must be made in their budgets in order to pay the tax liability.

Court ordered payments. Alimony, child support (including orders made by a state administrative agency) and other court-ordered payments. If the expense is already being deducted directly from a tax debtor's pay, do not allow it to be included as an additional expense.

Dependent care. For the elderly, invalid or handicapped. This expense is necessary if there is no recourse except for a tax debtor to pay the expense.

Education. Education is a necessary expense if required for a physically or mentally challenged child and no public education providing similar services is available. It is also a necessary expense if required as a condition of employment, such as a teacher whose employment is conditioned upon completion of a graduate program.

Health care. Health insurance, medical services, prescription drugs and medical supplies (including eyeglasses and contact lenses). A guide dog for someone who is visually handicapped would also fall into this category.

Involuntary deductions. Deductions from income include FICA, Medicare and mandatory union dues.

Life insurance. To be a necessary expense, insurance is limited to term policies which are already in effect at the time of the billing. Life insurance used as an investment is not a necessary expense. Consider if the payoff of the policy is high compared to the lifestyle of the beneficiaries. Even for term policies, expensive premiums must be justified. On whole life policies, the tax debtor should be required to obtain a loan against the value, withdraw the cash value (if it can be done without penalty) or suspend payments while the payment plan is in progress (if allowable by the insurance company). If payments can not be suspended, the expense will be considered as conditional.

Secured or legally perfected debts. If the debts meet the necessary expense test (health, welfare or production of income), payments will be allowed for these debts. To be allowed, a tax debtor must substantiate that the payments are being made regularly.

Taxes. Current federal (including FICA and Medicare), state and local tax payments. Back federal, state and local tax payments are necessary expenses. A tax debtor who is currently making payments on back taxes to other agencies should be required to work out a prorated payment to those taxing agencies based on the total liability amounts.

COLLECTIONS

NECESSARY EXPENSES, LONG TERM PAYMENT PLANS

(CONT. 4) 707.060

Unsecured debts. Minimum payments will be allowed if the tax liability, including projected interest and penalty accruals, will be paid within three years. Otherwise, payments will have to come from the total amount allowed under statewide and local standards. Payments on unsecured debts will not be allowed if omitting them would permit the tax debtor to pay in full within 90 days, with the exception of credit card minimum payments (90 day rule).

Miscellaneous expenses. This expense category has been established to avoid confrontation over minor expenses which the tax debtor claims are necessary, but which the Board does not recognize as necessary. Examples include cable television bills for remote areas with poor reception, extracurricular activities for children or monthly Christmas savings account deposits.

CONDITIONAL EXPENSES, LONG TERM PAYMENT PLANS

707.070

Accounting and legal fees. Fees are necessary only if they are for representation before the Board or they meet the necessary expense test (health, welfare or production of income). Other accounting and legal fees are conditional expenses and are allowable if the tax liability can be paid in full, including projected interest and penalty accruals, within three years.

Education. Expenses for private elementary and secondary, or public and private college education are conditional expenses and are allowable if the liability, including projected interest and penalty accruals, can be fully paid within three years.

Housing. Housing other than the principal residence is not a necessary expense. Other housing is a conditional expense allowable only if the tax liability, including projected interest and penalty accruals, can be paid within three years. Examples of such housing would include vacation property, owned, rented, leased or time-shared. If equity exists in the property, the tax debtor must make an attempt to borrow against the property.

The Board will generally allow a subordination of a lien to refinance a home to allow for increased payments or a lump sum payment from the refinance.

Other costs associated with housing are usually conditional. For example, pool service and gardening are optional and could be done by the tax debtor. Other types of home maintenance, such as roofing and plumbing repairs, may qualify as necessary expenses.

Retirement — voluntary payments. Payments will be allowed if the liability, including projected interest and penalty accruals, will be paid in full within three years and if the tax debtor's voluntary contribution existed prior to the tax liability.

Transportation. Although transportation charges which are within the statewide standard limits are not generally questioned, transportation not needed for family health, welfare or the production of income is not a necessary expense. If the tax debtor is claiming expenses for more than one vehicle, the additional vehicle must pass the necessary expense test. A review of the vehicle usage to determine conditional expenses may be required if the tax debtor is claiming in excess of the standard expenses in the transportation expense or in other standard expense levels. In keeping with the necessary expense test, any expenses associated with boats, motorcycles and recreational vehicles will not be allowed unless they are necessary for the production of income.

Secured or legally perfected debts. Debts which do not pass the necessary expense test will be considered as conditional expenses, provided that the tax debtor can show that the payments are being made regularly.

COMPLIANCE POLICY AND PROCEDURES MANUAL

COLLECTIONS

TAXES COLLECTED BY OTHER AGENCIES

709.000

VEHICLE, VESSEL OR MOBILEHOME USE TAX COLLECTIONS

709.020

The Board is responsible for administration of the Sales and Use Tax Law and is responsible for the collection of these taxes. The only exception is in the collection of the use tax on vehicles, vessels or mobilehomes required to be registered or are subject to identification by the Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD) and were sold by other than a licensed motor vehicle dealer, manufacturer, dismantler or, in the case of vehicles/mobilehomes, subject to identification by a licensed manufacturer, dealer, or dismantler, or a person required to hold a seller's permit or a person regularly engaged in the sale of vessels. The use tax will be collected by DMV or HCD at the time the vehicles, vessels or mobilehomes are registered.

The Board will continue to be responsible for the collection of the use tax on other vessels and vehicles (as defined in the Vehicle Code) and mobilehomes (as defined in the Health & Safety Code) not registered or subject to identification with DMV or HCD.

For further information, refer to Pamphlet 23, Occasional Sales of Vehicles, Vessels, and Aircraft.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT MOBILE HOME REGISTRATION INFORMATION

709.030

Ownership and registration information for mobilehomes not registered with DMV may be obtained from HCD. Ownership information is filed by license, serial or decal number, but may also be available by name and address of the owner.

A formal title search may be requested by completing Form No. HCD 491.1. The form is available from HCD and the fee will be waived. Once the title report is obtained, you will be notified of any changes filed with HCD for the following 120 days.

MOBILEHOME DEALER REPORT OF SALE BOOKS

709.040

Effective July 1, 1981, the Department of Housing and Community Development (HCD) took over the registration and titling of mobilehomes. Mobilehome dealers are now required to release their Report of Sale books to HCD when they close out their business. The Board of Equalization and HCD have established an agreement which allows for mutual notification when a dealer terminates his or her business.

When HCD finds that a mobilehome dealer is out of business or has not renewed his or her dealer's license, the Board office having jurisdiction over the dealer's place of business will be notified by telephone. If the Board wishes to audit the business and requires the Report of Sale books, they will be delivered to the Board (see new Report of Sale book sample attached). When the Board has no further need for the books, they will be returned to:

Department of Housing and Community Development
Division of Codes and Standards
Occupational Licensing Section
PO Box 31
Sacramento CA 95801

If the Board does not require the Report of Sale books, they will be subsequently destroyed by HCD.

When HCD is reviewing dealer Report of Sale books and finds evidence of noncompliance, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate Board office.

COMPLIANCE POLICY AND PROCEDURES MANUAL

MOBILEHOME DEALER REPORT OF SALE BOOKS

(CONT.) 709.040

When this Board finds that a mobilehome dealer has closed out or sold his or her business, it will contact the HCD Sacramento Occupational Licensing Section at one of the following numbers: (916) 323-9803 or ATSS 8-473-9803. If Report of Sale books are required, they can be requested at this time.

The Board will also provide the close-out date and location of books and records if known. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the Board or destroy them, depending upon the Board's requirements.

To determine a dealer's financial stability and ensure subsequent public protection, the Board will notify HCD, at one of the above telephone numbers, when either of the following situations arise on active mobilehome dealer accounts:

1. A mobilehome dealer has an outstanding liability which requires a field assignment.
2. A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:
 - (a) Based on the audit, it does not appear the business is properly financed to clear the probable liability.
 - (b) There is factual information produced through our audit that the business is in financial trouble.
 - (c) The district administrator approves the telephone call.

A notation that HCD has been contacted should be entered on the compliance or audit assignment.

SOURCES OF LIABILITY AND WHEN TO PROCEED**712.000****SOURCES OF LIABILITY****712.010**

All liabilities arise from two sources:

- a. **SELF-ASSESSED.** Delinquent self-assessed liability subject to collection is what the taxpayer declares as owing, but has not paid. Self-assessment develops because of the filing of “no remittance” returns; filing returns which are accompanied by checks which are dishonored by the bank; filing “partial remittance” returns or late payment of returns without penalty and interest included in the remittance.
- b. **BOARD-ASSESSED.** Board-assessed liabilities are billed originally on notices of determination. Except in those cases where a petition for redetermination is filed, determinations are followed by a demand for payment issued after the liability becomes final. The source of the determination may be any of the following:
 - 1) field audits;
 - 2) examination of records from which a field billing order is prepared;
 - 3) computation errors by taxpayers on various returns required to be filed showing an underpayment of tax due; or
 - 4) information received from sources such as Department of Motor Vehicles or Information Use Tax returns disclosing a liability.

WHEN TO PROCEED ON SELF-ASSESSED LIABILITIES**712.020**

Delinquent liabilities resulting from “no remittance” or “partial remittance” returns are immediately subject to full collection effort at the time of filing provided the returns are past due. A demand for immediate payment is issued when returns are filed with less than full payment.

If delinquent “no remittance” or “partial remittance” returns are filed at the district office, a demand billing is not necessary to initiate collection action. The fact a return was filed after the due date and was not fully paid creates a delinquent pay immediately situation and collection action should begin immediately.

All penalty and interest charges resulting from the late filing or late payment of amounts due on returns are subject to collection at the time the return becomes delinquent.

WHEN TO PROCEED ON BOARD-ASSESSED LIABILITIES**712.030**

Except in cases where a timely petition for redetermination is filed, amounts due on determinations become final and delinquent 30 days from the date on which notices are issued after which an additional penalty of 10 percent of the unpaid tax must be added for failure to pay the amount of the determination on or before the due date. Petitions must be filed within 30 days after a notice of determination is mailed.

Determinations for failure to pay for stamps under the Cigarette and Tobacco Products Tax Law become final 10 days after service of the determination upon the distributor, unless a timely petition is filed and the required security is posted within the 10-day period.

Collection action may be initiated immediately after a determination becomes final. A demand billing need not be issued before collection action begins. Advance work, with the exception of summary collection action, may be done before the finality date if collection may be impaired by delaying the gathering of information.

COMPLIANCE POLICY AND PROCEDURES MANUAL

WHEN TO PROCEED ON BOARD-ASSESSED LIABILITIES

(CONT.) 712.030

With the exception of amounts due under the Sales and Use Tax and Cigarette and Tobacco Products Tax Laws involving jeopardy determinations, action before the item becomes final can only be for the purpose of trying to induce payment or to develop leads. The Sales and Use Tax and Cigarette and Tobacco Products Tax Laws permit the service of notices to withhold before jeopardy determinations become final. Service of notices should be limited to those situations where immediate action is imperative to protect the interest of the state.

Outside of the exceptions noted in the preceding paragraph, no action to enforce collection through the use of summary procedures may be used until after the finality date of the determination. The general policy is no action should be taken on determinations not yet final since approximately three-fourths of these items are paid without any action being necessary. Ground work before the item is final may be done when indicated and through the use of proper discretion.

If a timely petition for redetermination is filed, the determination will, in due course, be superseded by a notice of redetermination. Notices of redetermination, for collection purposes, will be handled in the same manner as notices of determination. No action to enforce collection through the use of summary procedures should be taken under any of the laws during the pendency of a petition for redetermination.

COLLECTIONS

ADDITIONAL USES OF THE FORM BT-1271, MISCELLANEOUS CHANGE ORDER

712.041

The Form BT-1271, Miscellaneous Change Order, when prepared by field offices, will be forwarded to the Headquarters Account Analysis and Control Section for processing.

1. To change the address on the accounts receivable miscellaneous name and address file (used to update addresses on duals and have billings mailed to a different address):
 - a. Enter the nine-digit account number (SR FH 22-123456-1).
 - b. Enter name and address of person dualled.
 - c. Check the notice box 4-Statement.
 - d. Check the entry box 38-Change address.
 - e. Check the "N-A" box, bottom left of form.
 - f. Enter "O" in the Batch box, bottom right of form.
2. To obtain a current billing of all final liabilities or a billing for one non-final liability (used when a computer-generated billing is desired over a video printout):
 - a. Enter the eight-digit account number (SR FH 22-123456).
 - b. Check the "Owners" box/line (indicates good name and address on the registration file).
 - c. Check the notice box which indicates the type of billing you want issued (internal notice, statement of account or demand).
 - d. Check the entry box 39-Prepare statement...; write in the period of liability for non-final statements.
 - e. Enter "1" in the Batch box, bottom right of form.
3. To include another district in the distribution of billings on a specific account (used when another district is involved in the collection process on any given account):
 - a. Enter eight-digit account number.
 - b. Check the "Owners" box/line.
 - c. Check the notice box which indicates the type of billing you want issued.
 - d. Check the entry box 41-District office...; enter district office code(s) up to three districts.
 - e. Enter "3" in the Batch box, bottom right of form.
4. To stop the automatic issuance of a demand billing and subsequently remove the stop flag if you so desire (used if a statement of account, internal notice or no billing is desired):
 - a. Enter eight-digit account number.
 - b. Check the "Owners" box/line.
 - c. Check the notice box O-Internal Notice.
 - d. Check the Entry box 50-Other Changes and enter period _____ to _____.
 - e. Check the action box 01-Stop Demand or 02-Clear Demand Stop.
 - f. Enter "O" in the Batch box, bottom right of form.

COLLECTIONS

INTERDISTRICT AND INTRADISTRICT TRANSFER OF COMPLIANCE ASSIGNMENTS

721.000

GENERAL

721.010

Form BT-142, District Request for Investigation, includes both interdistrict and intradistrict assignments. The purpose of this form is to refer an assignment to another district or branch office and receive back a reply in the form of a progress report or a completed assignment.

PROCEDURE FOR MAKING REFERRAL

721.020

Intradistrict: Form BT-142 may be used by district offices to send assignments to their branch offices and shift assignments between branch offices.

Interdistrict: Form BT-142 may be used for making assignments to other districts, but only when a field call is necessary. Assignments should never be transferred from one inside collector to another.

All pertinent information should be transmitted with the assignment. This would include copies of correspondence, billings and other related documents. Supplemental sheets containing any additional information, such as file notes, should be included.

If additional information is later received by the referring office which might be helpful to the receiving office or which would supplement or alter information forwarded with the original assignment, the additional information should be promptly forwarded to the receiving office.

Form BT-142 has a reply section. Referring offices must prepare the form in sufficient copies so at least one copy, in addition to the original, is available to the receiving office for making progress reports. Should sufficient copies not be available to the receiving district for making a series of progress reports, copies of the original assignment may be used for this purpose.

Suggested number of copies and distribution:

- Original — to receiving district
- First and Second — to receiving district
- Third and Fourth — Referring district file and assignment follow-up file

CONTROL OF ASSIGNMENT BY REFERRING DISTRICT

721.030

When an account is referred to another district, the referring district shall enter the assignment in an approved assignment control system such as, the Compliance Assignment Control Program (COMPASS), BT-93, Assignment Control Sheets, or alphabetical binder containing copies of the assignments until cleared (see CPMG 205.100). The follow-up controls are based upon the time intervals in Subsection **721.050**.

CLEARANCE OF ASSIGNMENT BY REFERRING DISTRICT

721.040

If the referring district clears the referred case, they should promptly notify the receiving district to return the assignment. Prompt notification is important in matters involving collection items. Failure to do so could result in continued collection activity against a taxpayer who has no liability. Notification of receipt of partial payments on collection assignments should be made to the receiving district by the referring district.

Form BT-424, Advice of Payment, or a video display printout (See Subsection **799.015**) should be used for the purpose of notifying districts payments have been received. The referring district shall prepare Form BT-424 or a video display printout, for each payment collected by their district, and shall forward the document to the receiving district.

RESPONSIBILITY OF RECEIVING DISTRICTS

721.050

Upon receipt of an assignment from another district, the receiving district will log the assignment into an approved Assignment Control Program (see CPMG 205.100). A follow-up date of forty-five days from the day the assignment is received in the district will be set to initially review the assignment. The receiving district will have sixty days, after receipt of the interdistrict assignment, to advise the referring district of progress made. Thereafter, progress reports must be made every sixty days. Receiving districts may use a copy of Form BT-142 as a progress report. The BT-142 assignment, when returned to the referring district, will be accompanied by the original assignment request, along with any documents that may have been generated.

In all cases where a receiving district makes a collection on a case referred by another district, a copy of the Form BT-424, Advice of Payment, or a video display printout will be forwarded to the referring district.

REASSIGNMENT BY RECEIVING DISTRICT

721.060

If the receiving district needs to reassign the case to a third district, copies of the reassignment correspondence will be forwarded to the originating office.

DISTRICT RESPONSIBILITY — DETERMINATION BILLINGS

721.070

If a BT-414-A, Report of Field Audit, BT-414-B, Field Billing Order or BT-1043-D, Request for Determination, is being done for another district, the district preparing the determination request will be responsible for controlling the request until a billing is issued, to avoid losing the document.

TRANSFER OF REVOKED ACCOUNTS

721.080

Prior to making an interdistrict transfer of a revoked account, all reasonable attempts to clear the revocation should be made. Reasonable attempts would include, but are not limited to: (1) making contact with the taxpayer to determine whether the account is active or should be closed-out; (2) if contact is made with the taxpayer, can the cause for revocation be cleared and the account reinstated prior to transfer; or (3) if unable to contact the taxpayer, initiate a Form BT-142, District Request for Investigation, to the district where the taxpayer is operating.

The account may be transferred only after it has been proven the taxpayer has been found to be actually operating in another district and the district of record cannot clear the cause of revocation and the account cannot be reinstated. The following steps must be followed when transferring an account:

1. The originating district's Principal Compliance Supervisor will send to the receiving district's Principal Compliance Supervisor a memorandum indicating a revoked account is being transferred.
2. The word "REVOKED" will be printed in red or highlighted on the Form BT-1047, Notice to Change Account Record, in Section D, #2, on the Delinquency line.
3. The BT-1047 and the memorandum will be stapled to the front exterior of the account file folder being transferred.

The originating district should not send new or replacement permit card(s) to the taxpayer nor should the original BT-1047 be sent to Headquarters Registration Unit. The originating district should forward all documents to the receiving district. Documents being forwarded would include all notes the representative made during the investigation. Any original documents which need to be mailed to the taxpayer and/or headquarters will be mailed by the receiving district when applicable. If the receiving district cannot complete the transfer of the account, all paperwork and the file folder will be returned to the originating district.

Any attempts to transfer an account without following the above instructions will cause the receiving district to return all documents and the file to the originating district.

PARTNERSHIP COLLECTIONS

724.000

GENERAL

724.010

A partnership is an entity composed of two or more persons who have contracted to join in business and share the profits either equally or otherwise.

Partnerships may be formed either by written or verbal agreements. With sufficient evidence, a person may be considered a partner without an agreement if there was an investment in the business, participation in profit sharing, or if in the operation of the business, there was an exercise of rights or authority normally reserved to a partner. When there is uncertainty whether a partnership existed, a complete report should be forwarded to the Special Procedures Section for a decision.

LIABILITY OF PARTNERS

724.020

When a liability is created by a general partnership, the partners are collectively and individually liable for the entire amount owing. This means the entire liability may be collected from the assets of one individual partner or from the collective assets of the general partnership.

No representative of the Board should lead any partner to believe the partner will be relieved of further liability if a payment equal to their particular percentage of the partnership is made.

If the partnership entity is still operating, the first efforts toward collection should be from partnership assets. If collection cannot be made readily from this source, there should be no delay in proceeding against the assets of the individuals who comprise the partnership.

If the partnership is no longer operating and all partnership assets have been distributed, the action to be taken will be against individual assets of the former partners without concern as to whether equal amounts are collected from each of them.

The fact that one or more members of a partnership may be making payments is not a reason to withhold action against other partners. Until the liability is paid in full, there should be no relaxation of effort against any of the partners.

Generally, a partner cannot be held responsible for a liability accrued after the dissolution of the partnership in which the partner has retired. The retired partner may be held liable, however, if the Board was not notified of the retirement or if the partner did not in fact retire but continued to participate in the partnership affairs. The retiring partner may be held liable if the taxable transactions were made in winding up the partnership affairs or in completing transactions unfinished at the time of dissolution of the partnership.

Where a billing is to be made when the above situation is encountered, a complete report should be forwarded to the Headquarters Special Procedures Section together with the district recommendation. The determination against the original entity would be issued on the basis that failure to provide notification of dissolution of the partnership deprived the Board of an opportunity to obtain from the new entity adequate security, thereby resulting in a loss to the state unless collected from the entity which held the seller's permit.

NON-PARTNER CLAIMS**724.025**

If a partner claims that he or she was never involved as a partner and therefore not liable for amounts due, he or she (claimant) must request relief in writing. The request must state the grounds or reasons why the claimant should not be held liable as a partner. The burden of proof rests with the claimant. Evidence or documentation supporting the claim is required to be presented to the District Office of control. Examples of evidence or documentation should include the following:

1. Federal and state income tax returns for the periods in question for the claimant and the business.
2. Registration records and tax returns from other government agencies.
3. Public records, such as a city business license, fictitious name statement, liquor license, etc.
4. Copy of business premises lease agreement, utilities billings, etc.
5. Canceled business checks and bank records showing authorized signers.
6. Any other evidence which will assist in substantiating the true ownership of the business during the period in question.

The receiving offices will forward the written request and evidence or documentation to the Special Procedures Section for review. The Special Procedures Section will review the documents, the seller's permit application, tax return signatures, other board records, and the submitted reasons or grounds when considering the claimant's request. The Special Procedures Section makes a recommendation and forwards the case to the Chief of Field for an approval or denial decision. After a decision is rendered, the Chief of Field returns the case to the Special Procedures Section Supervisor who will send the requester a denial or approval notification letter with a copy to the receiving office, Chief of Field, and the Compliance Program Manager. If the request is approved, the case will be forwarded to the Petition Section for removal of the claimant from the determined amounts liability.

Continued appeal of a denied request must be made through the refund request/appeal process.

LIMITED PARTNERS**724.030**

The liability of a limited partner extends only to their contribution to the business enterprise. On July 1, 1984, the California Revised Limited Partnership Act was created. This act partially repealed the existing Uniform Limited Partnership Act. If a limited partnership existed on July 1, 1984, and elected not to be governed by the Revised Limited Partnership Act, the limited partners incurred no personal liability if the limited partnership was duly established under Corporation Code Section 15502 and had complied with the provisions of Sections 15501 through 15533, except as provided therein. (see, e.g., Sections 15506, 15507, 15511, 15517.) If a limited partnership was established after June 30, 1984, as well as those existing limited partnerships electing to be governed by the Revised Limited Partnership Act, the limited partners incurred no personal liability when the limited partnership was duly established under the Corporation Code Section 15621 and has complied with the provisions of Sections 15611 through 15723, except as provided therein (see, e.g., Sections 15632, 15633). Both the new and the old limited partnership acts are found in the Corporation Code.

Contributions of a limited partner may be in the form of money, goods, real or personal property, and, in the case of bars or liquor stores, interest in the liquor license. These are subject to levy and execution for debts of the limited partnership. The names of limited partners cannot be included in liens or abstracts recorded to acquire liens on real property unless the real property was all or part of the contribution to the business.

INNOCENT SPOUSE

724.050

A spouse may be relieved from liability for the payment of taxes, including penalties and interest, under Section 6456 of the Revenue and Taxation Code if each of the following applies to the portion of the determination for which relief is sought:

1. Both spouses' names appear as applicants on the application for a seller's permit under Section 6066 of the Revenue and Taxation Code.
2. There is an understatement of tax liability because of one or more of the following:
3. The understatement is attributable to the nonclaiming spouse. The understatement may be decided by whether the claiming spouse did not render substantial service as a retailer of taxable items. However, if neither spouse rendered substantial services as a retailer, both spouses are liable for the debt.
 - a) a failure to file a required return;
 - b) an omission of an amount properly includible;
 - c) an erroneous claim for a deduction or credit.
4. The claiming spouse did not cause the erroneous deduction or credit to be entered on the return and establishes, that he or she did not know of, and would not have had reason to know of, the understatement.
5. The claiming spouse did not significantly benefit, directly or indirectly, from the understatement, taking all other facts and circumstances into consideration. Normal support is measured relative to each family's standard of living. The claiming spouse will not be deemed to have benefited directly or indirectly from the understatement solely as a result of normal support unless the claiming spouse's lifestyle significantly improved during the periods of understatement. Gifts received by the claiming spouse, lavish purchases made by either spouse or luxury items purchased with unreported funds may be evidence that the claiming spouse benefited directly or indirectly from an understatement of tax liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the understatement occurred. For example, if a claiming spouse received from the other spouse an inheritance of property or life insurance proceeds which are traceable to the understatement, the claiming spouse will be considered to have benefited from that understatement. Other factors which may be considered include the fact that the claiming spouse has been deserted by the other spouse or that the two applicant spouses at the time of application for a permit have subsequently become divorced or separated.

To seek relief of determined amounts, the claiming spouse must submit a request in writing, listing the account number, the specific tax amounts and circumstances (as outlined in 3, 4, and 5 above), which show that the understatement of the amount(s) due were not attributable to him or her.

The receiving office will conduct an investigation of items 1 through 5. The results of the investigation, in a summarized format, is to be sent to the Special Procedures Section for review. After review, the Special Procedures Section makes a recommendation and forwards the case to the Chief of Field for an approval or denial decision. After a decision is rendered, the Chief of Field returns the case to the Special Procedures Section Supervisor who will send the requester a denial or approval notification letter with a copy to the receiving office, Chief of Field, and the Compliance Program Manager. If the request is approved, the case will be forwarded to the Petition Section for removal of the claiming spouse from the determined amounts liability.

Continued appeal of a denied request must be made through the refund request/appeal process.

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SUCCESSOR'S LIABILITY

727.000

POLICY REGARDING COLLECTION FROM SUCCESSORS

727.010

Any purchaser who does not avail themselves of the protection provided in the law becomes liable as of the date of the purchase of the business or as of the date the predecessor's liability becomes final. However, no collection action can be taken against the successor until a notice of successor's liability is issued and becomes final.

As a policy, first efforts to collect will be directed against the predecessor. This policy will be adhered to only as long as collection in full can be made within a reasonable period of time, either directly from the predecessor or from assets belonging to the predecessor held by a third person. This policy will be disregarded if successor collection will become jeopardized by delaying future collection action.

LIABILITY SECURED BY SURETY BOND

727.020

If the liability of the predecessor is secured entirely by a surety bond, no collection action should be taken against the successor even though a successor's billing has been issued. This billing will merely notify the successor of what might be termed a "contingent liability". In these cases if collection cannot be made from the predecessor, demand will be made upon the surety to clear the liability.

If a portion of the predecessor liability is secured by a surety bond, demand should first be made on the surety before requiring the successor to pay or, if action is taken against the successor before payment by the surety, the approximate amount to be received from the surety should be taken into consideration.

The amount for which a successor is liable is not reduced by the amount for which the surety of the predecessor is liable until payment is made by the surety.

SURETY BOND ON SUCCESSOR'S ACCOUNT

727.030

The surety of a successor cannot be held liable for the amount its principal owes as a successor.

SUCCESSOR'S LIABILITY AS A TAX

727.040

The liability of a successor is considered a tax liability and is subject to all the remedies and priorities the same as if the liability had been incurred by the successor through his/her own operations. A successor's liability will be included in bankruptcy, assignment or probate claims filed against the estate of successors and is entitled to the same priority as other tax claims.

Agreements or contracts between the buyer and seller which attempt to place the responsibility and time of payment of the liability cannot overcome the requirements of the law and will be disregarded.

SUCCESSOR BILLINGS

727.050

Billings against a successor are made for any amounts over \$100 on a notice of successor's liability. The law requires a notice of successor liability be issued and the successor be allowed 30 days within which to petition the liability prior to any collection action (see Section 6814 of the Sales and Use Tax Law).

COMPLIANCE POLICY AND PROCEDURES MANUAL

AMOUNTS NOT DUE OR DELINQUENT AT TIME OF SALE

727.060

Even though the liability of the seller might not be due or delinquent at the time of transfer of the business or might be disclosed by an audit at a later date, the purchaser is liable for these amounts up to the amount of the purchase price. These amounts need not be a matter of record at the time the sale of the business takes place.

Reference: Sales Tax Regulation 1702

SUCCESSOR'S LIABILITY RESTRICTED TO LOCATION PURCHASED

727.070

In addition to the other limitations, the liability of the successor is limited to amounts owed by the predecessor which were incurred at the location purchased. If the seller operated at more than one location, while incurring a total liability for all locations, his/her liability incurred at the location being sold must be determined. This represents the amount for which the successor can be held liable.

PURCHASE OF FIXTURES AND EQUIPMENT OR PART OF A BUSINESS

727.080

Before a purchaser can be held liable as a successor, the fact, "a business or stock of goods" has been purchased must be established. If the purchase involved only an item or items such as fixtures, equipment, name, lease or a liquor license, successor's liability is not necessarily applicable.

If the purchaser acquired only a portion of the business or stock of goods of the seller, the portion purchased must be substantial in order to assert successor's liability. In all cases where there is doubt as to whether the purchaser has acquired sufficient of the predecessor's business to become liable, a comprehensive report should be submitted to the next level of supervision for possible referral to the Headquarters Special Procedures Section for further review.

CONSIDERATION IN A FORM OTHER THAN MONEY

727.090

The purchase price paid for a business need not be in the form of money to establish a liability against the successor. If the purchaser agrees to the assumption of obligations owed by the seller, or agrees to cancel amounts owed to him by the seller, or gives something other than money as a consideration for the transfer of the business, the purchaser can be held liable as a successor. In cases where the consideration is represented by something other than money, the value of the business or stock of goods purchased must be determined to define the extent of liability.

Reference: Section 6812 Sales and Use Tax Law

COLLECTIONS

PENALTY AND INTEREST — SUCCESSOR'S LIABILITY

727.100

The liability of the successor or purchaser of a business or stock of goods extends to amounts incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against him or her, which include taxes, interest thereon to the date of payment of the taxes, and penalties including penalties for nonpayment of taxes. Liability also extends to penalties determined and unpaid at the time of sale for negligence or intentional disregard of the Sales and Use Tax Law or authorized rules and regulations, and fraud or intent to evade the Sales and Use Tax Law or authorized rules and regulations.

Section 6814 (b)(1) of the Revenue and Taxation Code, added in late 1989, states:

“If the Board finds that a successor’s failure to withhold a sufficient amount of the purchase price to cover the amount owed by the former owner is due to reasonable cause and circumstances beyond the successor’s control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the successor may be relieved of any penalty included in the notice of successor liability.”

Section 6814 (b)(2) of the Revenue and Taxation Code states “Any successor seeking to be relieved of the penalty shall file with the Board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.”

Reference: Sales Tax Regulation 1702

PURCHASE MONEY DEPOSITED IN ESCROW DOES NOT RELIEVE A SUCCESSOR

727.110

A successor cannot be relieved of liability because the purchase price was deposited, or a portion thereof, in escrow from which the Board did not receive payment. If the buyer allows funds in escrow to be distributed without first securing a clearance from the Board, the fact an escrow was conducted is of no significance.

If the funds in escrow are exhausted by levies, other creditors, or only enough funds are left to make partial payment to the Board, the successor remains liable to the extent of the purchase price.

When the discovery is made, levies are being served by other creditors on funds in escrow, the Board should promptly levy for the amount of the obligation due from the predecessor in order to secure any or all available funds.

Reference: Sections 6811 & 6812 Sales and Use Tax Law

PERIOD WITHIN WHICH TO ESTABLISH SUCCESSOR'S LIABILITY

727.120

If the purchaser of a business or stock of goods does not request a Certificate of Tax Clearance from the Board as outlined in Section 6812 of the Revenue and Taxation Code, the purchaser can be billed for the predecessor’s liability to the extent of the purchase price valued in money.

A “Notice of Successor’s Liability” billing may be issued not later than three years after the Board is notified in writing of the purchase of the business or stock of goods. The statute of limitations for issuance of the notice does not begin to run until the Board has been notified in writing of the purchase of the business. If there is no notification, there is no statute of limitation. This assumes a timely billing to the predecessor under Section 6487 of the Revenue and Taxation Code.

COMPLIANCE POLICY AND PROCEDURES MANUAL

PERIOD WITHIN WHICH TO ESTABLISH SUCCESSOR'S LIABILITY

(CONT.) 727.120

The time within which collection from the successor may be enforced, and during which time all summary procedures may be used, shall start to run at the time the notice of successor's liability becomes final. Summary procedures may be used at any time within ten years from the start of this period. The period may be extended by recording a Notice of State Tax Lien or abstract against the successor in any county before the expiration of the ten-year period and may be further extended by a new recording before the expiration of ten years from the date of the original recording.

Reference: Sections 6812 & 6814 of the Sales and Use Tax Law

HEADQUARTER'S RESPONSIBILITY — SUCCESSOR BILLINGS

727.130

Successor liability billings will be generated through the Headquarters Special Procedures Section .

The Petition Section will process, acknowledge, and control all petitions for reconsideration. This section is charged with the responsibility of seeing that petitions are resolved expeditiously and, if possible, without the necessity of a preliminary and/or Board hearing(s). Since successor billings are frequently based on sketchy or unverified information, the petition will usually be referred to the district for additional investigation. Petitions which are sent to the district will be directed to the administrator for assignment to the appropriate section. Periodically, the Petition Section will make a request for a progress report to ensure that the district of control is handling the petition on a priority basis.

DISTRICTS' RESPONSIBILITY — SUCCESSOR BILLINGS

727.140

The district offices will occasionally receive a petition for reconsideration directly from the successor. Since routine collection procedures are normally instituted on "final" liabilities, the original of the petition and the envelope in which the petition was mailed should be immediately forwarded to the Petition Section for processing. The placing of the successor billing into petition status by the Petition Section will cause an "SW" (sundry withhold) indicator to appear on the video terminal accounts receivable program and will also stop any collection activity which would normally commence on the now petitioned liability.

The district staff is responsible for ensuring all petitions for reconsideration are handled on a priority basis. Copies of any correspondence between the successor and the district or other Headquarters' staff should be sent to the Petition Section.

When the district investigation is completed, a report of the findings should be sent to the Petition Section. This report should include the following:

1. If applicable, the district's basis for recommending that the successor billing either be reduced or canceled.
2. Whether or not the successor agrees with the district's recommendation.
3. Whether or not the successor wants a hearing.
4. Information as to efforts to collect from the predecessor. Such information also must be clearly documented in the predecessor file and included in hearing information prepared for Board hearings.

Form BT-467, Notice of Requirement in the Sale of a Business, or Form BT-1274, Notice of Amounts Due, will be used during the close-out process when the predecessor's existing liability exceeds or is expected to exceed \$100.

CORPORATE COLLECTIONS**730.000****GENERAL****730.010**

Sales and Use Tax Law recognizes a corporation as a “person” within the meaning of the law subject to the same requirements as any other type of taxpayer.

A corporation is an entity created by statute and is distinct and separate from members or stockholders and from directors or officers. Consequently, a corporate liability generally can be collected only from assets of the corporation. Stockholders, directors, and officers acquire no personal liability solely through affiliation with the corporate entity. Exceptions which relate to tax collection are discussed in Subsections **730.045** and **730.050**.

Approximately 65% of all amounts due, for which discharge from accountability was obtained during a three-year period, were balances due from corporations. This amount represents less than one-third of the total number of items written off. When a corporation is without assets, is defunct, and/or there is no personal liability, there is no source from which collection can be made. Therefore, you must take prompt appropriate action to enforce collection of delinquent liabilities from corporations as soon as difficulties are apparent.

By thoroughly analyzing the situation at the time the application for permit is filed, obtaining adequate security, reappraising security requirements when difficulties first develop, documenting tax reimbursement for possible future use in justifying action under Section 6829, and promptly utilizing appropriate remedies including dual determinations against corporate officers, losses on corporation accounts can be held to a minimum.

REQUIREMENTS TO QUALIFY AS A CORPORATION**730.020**

Before a corporation can operate as such the incorporators must file with the office of the Secretary of State articles of incorporation and then must be issued a corporate charter. Should the corporation later be suspended, the corporation will become incapable of exercising its rights, privileges, and powers until such time as it is revived.

INCORPORATION WITHOUT NOTIFICATION TO THE BOARD**730.030**

Cases arise where a seller’s permit has been issued to an individual or partnership and the entity to which the permit was issued later incorporates without notification to the Board. A liability is then disclosed which was incurred during the period subsequent to the date of incorporation and is assessed against the corporation. If the liability is uncollectible from the corporation, a report will be made to the Headquarters Special Procedures Section where consideration will be given to the issuance of a dual determination against the entity to which the permit was issued.

The dual determination against the original entity would be issued on the basis that failing to provide notification of incorporation has deprived the Board of an opportunity to obtain from the corporation adequate security which resulted in a loss to the state.

INCORRECT CORPORATE REGISTRATION

730.035

A significant number of California corporations re-incorporate in other states without notifying the Board. Once a corporation has been identified as being out of compliance with regard to Board registration, new registration should be requested and sanctions imposed if the corporation fails to comply.

If the dissolved corporation has a liability or a liability is disclosed through investigation or audit, a successor billing should be requested and cleared through established collection procedure. In cases where the successor has terminated and their security is in the form of a surety bond, the procedures to follow are explained in Subsection **727.000** et. seq.

An action against corporate shareholders is still another remedy. The California Corporations Code requires a notice must be filed with the Secretary of State upon dissolution of the California corporation (Section 1901 (a) Corporations Code). The notice must be sent to all shareholders, known creditors and claimants whose addresses appear on corporate records (Section 1903 (c) Corporations Code). If notice is not given, where there is no security or other means of collection, and assets have been distributed, shareholders may be sued in the corporate name for any liability of the corporation arising prior to dissolution (Section 2011 (a) Corporations Code). The stock register, corporation commissioner or Secretary of State files should be checked for shareholder information. California corporate law will generally apply to foreign (out-of-state) corporations doing business within California, as well as California corporations.

UNPAID LOANS

730.045

When loans to stockholders, officers or directors remain unpaid, a legal basis for collection action from such person(s) exists. If directors approve unauthorized loans, court action can be taken against those directors and/or shareholder recipients. An unauthorized loan is one not voted on by the holders of a majority of the shares of all classes of stock other than stock held by the benefited person. When either unpaid authorized loans or unauthorized loans exist, an audit or investigation should document the type of loan, name of recipient, terms of loan, balance unpaid and type of action by the board of directors authorizing such loans (Corp. Code Section 315, 316(a)(3)).

UNLAWFUL DISTRIBUTIONS

730.050

Sections 309 and 316 of the Corporations Code provide that directors who approve any of the following corporate actions are jointly and severally liable to the corporation for the benefit of all of the creditors or shareholders:

1. The distribution of retained earnings or assets to the corporation's shareholders in the following circumstances:
 - a) When the amounts of retained earnings prior to the distribution do not at least equal or exceed the amount of the proposed distribution; or
 - b) When immediately after the distribution:
 - 1) The sum of the assets of the corporation (exclusive of goodwill, capitalized research and development expenses and deferred charges) is not at least equal to 1 1/4 times its liabilities (not including deferred taxes, deferred income and other deferred credits); and
 - 2) The current assets of the corporation are not at least equal to the corporation's current liabilities or, if the average of the earnings of the corporation before taxes on income and before interest expense for the two preceding fiscal years were less than the average of the interest expense to the corporation for such fiscal years if the average earnings were not at least equal to 1 1/4 times current liabilities (Corp. Code Section 500); or
 - c) When a corporation makes a distribution and it is likely the corporation will be unable to meet any liabilities as they mature (Corp. Code Section 501).
2. The distribution of assets to shareholders after institution of dissolution proceedings without paying or adequately providing for all known liabilities.

In addition, shareholders may be liable for unlawful distributions knowingly received (Corp. Code Section 506).

When collection of the liability from the corporation is doubtful and an unlawful distribution or other unlawful act by a director or directors (as described above) is suspected, the minutes of the board meetings should be examined for proof of such unlawful distribution or other unlawful acts. Other documents that may need to be examined are the retained earnings statement, the balance sheet, the statement of changes in financial position, etc.

If there is sufficient proof of an unlawful distribution, the Board may seek court action to pursue collection of the liability against the directors and/or shareholders.

COMPLIANCE POLICY AND PROCEDURES MANUAL

OUT-OF-STATE COLLECTIONS**733.000****GENERAL****733.010**

Each in-state district is responsible for taking action to collect delinquent amounts of sales and use tax from persons who are located outside of the state but who have incurred liabilities in this state. The in-state district in which the liability was incurred is the district which is responsible for taking this action. In those cases where the person has departed from California leaving no means of collection in this state, such action will consist of efforts to collect through the use of correspondence, telephone calls, out-of-state DMV, IRS returns, credit reports and county assessor checks and requests to any other out-of-state agency which may be of assistance in locating the taxpayer or assets. Board levies **may not** be served on out-of-state entities holding property located outside the state. EWO's **may not** be served on out-of-state entities holding wages earned outside the state by an employee residing outside the state. If these efforts are unsuccessful in clearing the liability but the taxpayer has been located, and there appear to be attachable assets, and the amount owing is sufficient to warrant an out-of-state auditor making personal contact, the assignment should be referred to the Out-of-State District. When referral is made to the Out-of-State District, all pertinent information must be included with the referral letter.

AMOUNT OF LIABILITY**733.020**

In determining whether further action by the Out-of-State District is warranted, the in-state district will consider the amount owing, as well as whether a course of further action is available to the Out-of-State District. Accounts should not be referred to the Out-of-State District if the amount owing is relatively small or if it is obvious that no further action can be taken beyond that already taken by the in-state district. Accounts should not be referred to the Out-of-State District if there is a clear indication they should be written off. When further action on accounts of this type is not warranted or is not available, a recommendation for discharge from accountability should be sent to the Headquarters Special Procedures Section from the district.

OUT-OF-STATE DISTRICT ACTION**733.030**

Upon receipt of in-state district referrals, the Out-of-State District will consider the amount owing with any other significant factors, and determine whether to have an auditor make personal contact when assigned an audit in the taxpayer's area. If a personal contact is not practical, or if personal contact by the out-of-state auditor does not result in payment or positive information on assets, the Out-of-State District will return the assignment to the in-state district office with a report on the investigation. If the out-of-state auditor makes contact with the taxpayer, the auditor should obtain as much information as possible concerning the taxpayer's assets and forward this information to the Out-of-State District for their action or referral. In any case, the report should detail any action taken on the account or relay any information which may be helpful in determining whether a referral to the Attorney General or a write off is warranted. The responsibility of the in-state district office is to then write off the liability or ask Headquarters Special Procedures Section to refer the case to the Attorney General.

If reports received from the Out-of-State branch offices indicate the possibility of assets in California, such as accounts receivable, real or personal property, the Out-of-State District will furnish the in-state district a copy of the report. The in-state district will proceed with collection action against these assets in the same manner as any other account.

OUT-OF-STATE DISTRICT COLLECTION RESPONSIBILITY

733.040

Persons who maintain a place of business in this State, but whose records are located out-of-state, are assigned Out-of-State District account numbers (see Section 230.000 et seq.). The Out-of-State District has the responsibility for all compliance functions, including accounts receivable. The Out-of-State District may call upon in-state districts for assistance in performing compliance functions, particularly on those accounts with in-state business locations.

If reports received from the Out-of-State branch offices indicate the possibility of assets in California, such as accounts receivable, real or personal property, the Out-of-State District will furnish the in-state district a copy of the report. The in-state district will proceed with collection action against these assets in the same manner as any other account.

SPECIAL PROCEDURES SECTION AUTHORITY AND RESPONSIBILITY

733.050

The Headquarters Special Procedures Section has final authority for determining whether a request for discharge from accountability should be made pursuant to an Out-of-State District recommendation. The Headquarters Special Procedures Section will thoroughly review each Form BT-479 received. If there is concurrence in the recommendation, the request for discharge from accountability will be processed. If, however, for any reason, the Special Procedures Section does not concur with the recommendation, the write-off will be returned to the district office.

The Headquarters Special Procedures Section also has final authority in determining whether referral to the Attorney General should be made pursuant to an Out-of-State District recommendation. In most cases, when such a recommendation is received, the Special Procedures Section will arrange to secure a credit report on the taxpayer. After securing the credit report, the Special Procedures Section will consider all factors and determine whether the case should be referred to the Attorney General.

NOTIFICATION OF ACTION TO DISTRICTS

733.060

In every case where a Form BT-479 is received by the Headquarters Special Procedures Section, or where referral to the office of the Attorney General has been recommended, the Special Procedures Section will inform the district of the action taken. Such notification may be in the form of a copy of Form BT-479, or a copy of the letter referring the case to the Attorney General.

NOTICE TO WITHHOLD — FORMS BT-465**736.000****GENERAL****736.010**

Forms BT-465, Notice to Withhold, are used respectively under sales and use tax as a simple means of preventing the transfer of assets belonging to delinquent taxpayers when the assets are in the possession of other persons and, for some reason, use of a Notice of Levy is not desired. Persons who hold the assets and who are served with the Notice to Withhold may neither transfer nor make other disposition of the assets during the effective period of the notice without first receiving consent of the Board (see Subsection 135.070).

The notice attaches only those assets in the person's possession at the time of service and has no effect on assets which later come under that person's control. The notice will not be used to garnish wages.

Any person who, after being served with the notice, makes a transfer or other disposition of assets during the effective period of the notice without first receiving consent of the Board, becomes personally liable to the extent of the value of the assets transferred if, solely by reason of the transfer, collection cannot be made.

The notice provides an effective collection aid if not abused by indiscriminate use. In general, the notice should be utilized only after the taxpayer has had an opportunity to pay voluntarily and has failed to do so or to stop the transfer of assets when the transfer would jeopardize collections. The notice should not be used in a routine manner on ordinary delinquent accounts as the first effort to collect or as a means of trying to "reform" a troublesome taxpayer. At the same time, unreasonable restrictions tending to discourage the use of the notice should not be imposed.

SERVICE OF NOTICE — FORM BT-465**736.020**

Service of the Notice to Withhold may be made within three years from the date the liability became final or within ten years from the last recording of an abstract or a lien (see Subsection **712.030**).

The service may be made by first class mail. However, if the district office feels it is in the state's best interest, service may be made in person or by certified or registered mail. When service is accomplished in person, an acknowledged copy of the notice should be obtained at the time of the service. At the same time, an effort should be made to obtain a report of the assets of the taxpayer being held pursuant to the notice. Since it is not always possible to obtain a report immediately, depending upon the type of organization served or the type of assets being held, a follow-up must be maintained to be sure a report is received in cases of this type as well as when service is made by mail.

RELEASE OF NOTICES TO WITHHOLD AND LEVY**736.025**

Whenever possible, a photocopy of the Notice to Withhold or Notice of Levy should be used for the release instead of Form BT-465-F or dictated letter. Stamp the upper-right corner of the notice with the release stamp, complete the blanks including authorized signature and prepare photocopies for the taxpayer and person(s) served.

COMPLIANCE POLICY AND PROCEDURES MANUAL

Form BT-465-F has been revised for use when a copy of the notice is not available or photocopies are illegible. Note the office address and type of notice must be entered. Offices may continue to use Form BT-465-F, Rev. 2, to release Notices to Withhold until existing supplies are exhausted.

REFUSAL OF PERSONAL SERVICE OF FORM BT-465

736.030

When the person served refuses to acknowledge service, a notation should be made on the form and the date and time of service should be shown with the name of the person with whom the notice was left.

If a person refuses to accept personal service of a notice of withhold, an attempt should be made to have the notice served either by certified or registered mail.

If this service is also refused, a Notice of Levy should be served or, if the assets are other than money, a warrant should be obtained from Headquarters for levy by the sheriff, marshal, constable or California Highway Patrol.

REPORT OF ASSETS HELD

736.040

When a report has been received that assets are being held, an attempt should be made to immediately contact the taxpayer and arrange for either payment of the liability or release to the Board of the assets held if they are in the form of money. If the taxpayer refuses to cooperate or is not available, a warrant should be promptly requested or a Notice of Levy should be promptly served.

ASSETS TO BE HELD BY A PERSON SERVED FORM BT-465

736.070

The person, other than a bank, served with a Notice to Withhold, is required to hold all of the assets belonging to the taxpayer over which control is exercised, regardless of their value or form and regardless of the amount set forth on the notice (see Subsection 135.070).

Banks and Federal and State Savings and Loan Associations are required to hold not in excess of two times the amount, including penalty and interest, shown on the Form BT-465 with respect to deposits, credits or personal property in their possession or under their control.

Generally, where the value of assets held exceed the amount of liability, an order to authorize release of excessive assets so as not to work an undue hardship on the taxpayer will be issued. Caution must be exercised in determining the amount to be released since a sufficient amount should be retained to pay all of the liability plus any costs which might develop through the necessity to use warrant procedures. Releasing assets as described will almost always be applicable only when money is being withheld.

SERVICE OF FORM BT-465 ON JOINT BANK ACCOUNTS

736.080

Service of the BT-465 may be made on a delinquent taxpayer who maintains a joint bank, savings and loan, or credit union account with another person. A bank, savings and loan association or a credit union which withholds amounts pursuant to a Notice to Withhold issued by the Board, is not liable to any other persons who have an interest on the withheld account. Similarly, the institution is not liable to a third party for withholding the account of the third party pursuant to a state order, when the delinquent taxpayer has no interest in the withheld account. In each case where the Board has issued a Notice to Withhold, the institution is required to mail a notice to each person named on the account indicating the reason the account is being withheld and the amount. The institution may assess the account a reasonable service charge for providing the notice.

COLLECTIONS

SERVICE OF FORM BT-465 ON JOINT BANK ACCOUNTS

(CONT) 736.080

If, after review of the reply, there is uncertainty as to the extent of the taxpayer's interest in the account, a Notice of Levy should be served. This action places the burden of determining the taxpayer's interest in the account on the institution. The institution will usually hold the entire account to avoid becoming liable through an improper release.

EFFECTIVE PERIOD OF FORM BT-465

736.090

The effective period of the withhold notice is 60 days from the date of service unless released sooner by the Board.

When necessary to maintain the withhold in excess of the effective period, the time may be extended by making a new service prior to the expiration of the original notice. Since the notice is used for collection purposes, there should seldom be more than one service. After an effective service is made, the taxpayer should either arrange for payment or release to the Board the assets held or the warrant procedure should be used.

SERVICE OF FORM BT-465 CREATES NO LIEN

736.100

The service of the Notice to Withhold does not create a lien upon the assets being held. To create a lien, a Notice of Levy or a levy under a warrant is necessary. As long as the assets are held pursuant to the notice they are subject to the liens of other creditors who might levy under a Writ of Execution and thereby assert priority over the Board's withhold. Therefore, a Notice of Levy should be promptly served to seize the assets and/or perfect the Board's lien.

SERVICE OF FORM BT-465 TO REACH RESERVE ACCOUNTS

736.110

If service of a notice upon a bank or finance company reveals a reserve account against which there is a contingent liability, the service should be promptly followed by a Notice of Levy. Usually, a considerable period of time is required for the contingent liability to be eliminated during which time other creditors can levy under a Writ of Execution. Therefore, the Notice of Levy procedure should be used to establish a lien (which will be in effect two years) rather than renewals of the Notice to Withhold.

SERVICE OF FORM BT-465 ON EMPLOYERS

736.120

Form BT-465 will not be served on employers to reach salaries, wages or commissions due taxpayers.

DISTRICT OFFICE CONTROLS — FORM BT-465

736.130

Each district office should establish proper controls over the use of the notice. All employees must clearly understand who is authorized to sign and approve the use of the BT-465 and those persons so authorized should have a thorough understanding of the situations and circumstances when utilization is proper. After service has been made, the person sending the notice has the responsibility for maintaining a follow-up and taking appropriate follow-up action to bring the matter to a successful conclusion.

UNAUTHORIZED TRANSFER OF ASSETS**736.140**

Any person who, after being served with the notice, transfers assets belonging to the taxpayer without consent of the Board and before the expiration of the effective period, can become liable to the extent of the value of the assets transferred. This will occur only if the amount is uncollectible from the taxpayer solely because of the unauthorized transfer. Comprehensive reports should be made to the Special Procedures Section in all such cases. The Special Procedures Section will determine whether the matter should be referred to the Attorney General for appropriate action against the transferor.

**SERVICE OF FORM BOE-465 TO REACH COMMUNITY
INTEREST OF TAXPAYER IN SPOUSE'S ACCOUNT**
736.150

Family Code Section 910 provides:

- (a) Except as otherwise expressly provided by statute, the community property is liable for a debt incurred by either spouse before or during marriage, regardless which spouse has the management and control of the property and regardless whether one or both spouses are parties to the debt or to a judgment for the debt.

Family Code Section 911 provides:

- (a) The earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage. After the earnings of the married person are paid, they remain not liable so long as they are held in a deposit account in which the person's spouse has no right of withdrawal and are not commingled with other community property, except property insignificant in amount. As used in this subdivision, "deposit account" has the meaning prescribed in Section 9105 of the Commercial Code, and "earnings" means compensation for personal services performed, whether as an employee or otherwise.

The BOE-465 has been revised to include the blurb "Service of this notice is intended to reach any and all community property interest of defendant in any account held in the name of the spouse. We believe the account(s) in the name of taxpayer name is community-funded and subject to this order [Cal. Family Code Section 910(a)]." You should also attach Form BOE-425-L4, Levy/Withhold Attachment — Spousal Affidavit. This form is available only through ACMS DOCGEN and the LAN in Special Taxes.

The use of the above statement, on your Notice to Withhold, is recommended when the intent is to reach the community property interest, which the taxpayer may hold, in an account standing in the name of the spouse. The spouse should be specifically named on the withhold and the taxpayer would continue to be named as defendant. If the social security number is available, the number should be entered below his or her name, as should any alias. On partnership defendants, name only the partner on whom you wish to reach a community property interest.

Should the necessity arise to levy a Warrant of Collection on the asset, notify Headquarters Special Procedures Section with a BOE-200-W and include the name and social security number of the spouse.

COMMUNITY PROPERTY AND SEPARATE PROPERTY**736.160**

Separate property includes the following:

1. Property owned by either spouse before marriage.
2. Property acquired during marriage by gift, devise, bequest, or descent.
3. The rents, issues and profits of separate property.
4. Property acquired during marriage with the proceeds of separate property.
5. Personal injury damages acquired from an interspousal action.

Family Code Section 760 says community property includes all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state, and property held in trust pursuant to certain revocable trusts (see Family Code Section 761).

The most common types of community property are:

1. Earnings of either spouse.
2. Personal injury damages.
 - a) Wrongful death of or injuries to a child.

NOTE: The recovery of the wrongful death of a spouse belongs to heirs, and is not community property [*Fiske v. Wilke*, 67 C.A.2d 440, 444(1945).].
 - b) Workman's Compensation award.
3. The proceeds of community property and proceeds of earnings, including pension and retirement benefits.
4. A proportionate share of the profits of a separate property business to which a spouse contributes labor or skills.
5. A loan on personal credit. NOTE: Money borrowed on the credit of separate property is separate property. An example of this is when separate property is used as security (mortgaged) so that money can be borrowed.

LIABILITY OF SEPARATE AND COMMUNITY PROPERTY FOR DEBT**736.165**

Due to the complexities of California's community property law, use the following approach to any community property question:

1. Is the property you wish to secure community property, the separate property of the taxpayer, or the separate property of the taxpayer's spouse?
2. Did the taxpayer or the spouse incur the debt?
3. Was the debt incurred before, during or after the marriage?

In general, community property is liable for a debt incurred by either spouse before or during marriage. However, the earnings of a married person during marriage are not liable for a debt incurred by the person's spouse before marriage until such earnings are deposited in an account in which the person's spouse has a right of withdrawal or are commingled with other community property.

Once a marriage is terminated, the person's debts are his or her own. Separate property and property received in the division of property at dissolution of marriage is liable for a debt incurred by the person before or during marriage even when the debt was assigned for payment by the person's spouse. Such property is not liable for a debt incurred by the person's spouse before or during marriage unless the debt was assigned for payment by the person in the division of the property. (This does not affect the liability of property for the satisfaction of a lien on the property.)

WARRANTS AND LEVIES**742.000****GENERAL****742.010**

The Board may issue warrants for enforcement of liens and collection of amounts due. Warrants may be issued at any time within three years from the date on which the liability became final, or within ten years after the last recording of an abstract or lien (see chart, Subsection **760.020**).

Before a decision is reached to request a warrant for levy, a survey of the case will be made to ensure the action will produce sufficient money to pay all costs and leave enough to make the effort worthwhile. A Notice of Levy, rather than a warrant, will be used to levy on money, or right to money, held or controlled by the tax debtor or by a third party.

Levies pursuant to warrants, with the exception of wage levies, are made by sheriffs, marshals, constables or California Highway Patrol. Upon receipt of the warrant, the officer is required to promptly serve the levy and take possession of the available assets according to the instructions which accompany the warrant. If the instructions require a keeper be placed on the premises of the taxpayer, this course of action will be followed.

If the asset consists of money, the person served is required to turn the money over to the officer who will turn the money over to the Board for the credit of the taxpayer's account after deducting fees, expenses and commissions. If the asset is other than money, the officer will take possession and arrange for sale to the highest bidder at public auction. After deducting his fees, expenses and commissions from the proceeds of the sale, he will remit the remainder to the Board for the credit of the taxpayer's account.

In order for the levy to be effective, the district should determine if the assets, other than money, are relatively free from third party claims since there is no provision in the law which would allow us to pay off third party claims. On rare occasions, however, as in the case of a "nearly clear" motor vehicle, arrangements can be made to provide the levying officer with sufficient advance fees to allow him to pay off the small interest of a legal owner. If such a course is anticipated, Headquarters Special Procedures Section will be advised of the exact amount needed in order to determine the advisability of this course of action.

The BOE-425-LA, Notice of Levy, is a two-page document. The first page of the form is sent to the entity being levied, i.e. a bank, a savings and loan association, etc. The second copy is sent directly to the tax debtor informing them of the levy. A BOE-425, Exemptions from the Enforcement of Judgments, must accompany the tax debtor's copy of the levy.

A BOE-425-L3, Information Sheet, should be attached to the original levy to a third party or a direct deposit institution, and to the tax debtor's copy of the levy.

If the property you are levying upon is a joint account held in the name of the tax debtor and the tax debtor's spouse, be sure to attach Form BOE-425-L4, Levy/Withhold Attachment — Spousal Affidavit. This form is available on ACMS DOCGEN and on Special Taxes LAN. The community property blurb for Form BOE-425-LA which is available on ACMS DOCGEN, should also be selected.

Memorandum of Garnishee is on reverse side of Notice of Levy, therefore it will always accompany the levy.

Summary warrant procedures are one of the Board's most effective collection remedies and should be used with proper discretion but without unreasonable restrictions which might tend to discourage use. There are many times when the use of a warrant is necessary. When the use of the levy is indicated, there should be no hesitancy because of possible unpleasant reactions from the taxpayer. In practically all cases where the levy is used, the taxpayer will have had an opportunity to clear any liability and failed to do so.

INTEREST ACCRUALS ON COLLECTIONS BY WARRANT

742.020

Since the officer making the levy and collection is acting in the capacity of an agent of the Board, the date payment is received by the officer is considered to be the date of payment. Interest accruals, therefore, will depend upon the date the officer receives the funds and not on the date they are remitted to the Board by the levying officer.

ISSUANCE OF WARRANTS AND INSTRUCTIONS

742.030

All warrants, except those on wages, are issued by the Headquarters Special Procedures Section upon request from the district offices. Requests will be reviewed by the Headquarters Special Procedures Section to determine whether the use of a warrant is appropriate. Factors which will be considered are legality of action, anticipated results and costs compared to amount expected to be collected.

At the time the warrant is prepared, the instructions to the levying officer will also be prepared by the Headquarters Special Procedures Section. If, after the warrant and instructions are issued additional assets are located, or the instructions are inadequate, administrators or persons who have been delegated authority are authorized to amend or supplement the instructions as necessary. In no case, however, will the period or amounts shown on the warrant be altered; in these instances, new warrants will be requested from Headquarters.

REQUEST FOR WARRANT

742.040

Districts may request the issuance of a warrant by preparing Form BOE-200-W, Special Procedures Warrant Request. This form is remotely printed in the Special Procedures Section.

ADVANCE PAYMENT OF FEES AND EXPENSES

742.050

Officers making levies pursuant to warrants are permitted to require advance payment of fees and expenses and, with the exception of fees and expenses incurred under the Cigarette and Tobacco Products Tax Law, the Board is authorized to make advance payments. The Cigarette and Tobacco Products Tax Law provides for payment of fees and expenses upon completion of the services of the levying officer.

Before any warrant is requested:

1. The determination should be made whether an advance payment will be necessary and, if so, in what amount.
2. When a warrant request is forwarded to Headquarters Special Procedures Section, the amount of advance payment required should be indicated, as well as to whom the check should be made payable.

The Headquarters Special Procedures Section, at the time the warrant and the warrant instructions are transmitted to the district office, will enclose a check covering any advance fees.

Whenever a levy for which an advance payment has been made results in full or partial satisfaction, separate remittance advice forms must be used to transmit the payment so the amount of reimbursement for the advance is clearly identified. Form GA-904, Advice of Miscellaneous Receipts, is used for transmittal of all non-tax items such as the reimbursement of the levying officer's fees and expenses. Unless this is done, the account of the taxpayer will be credited with the amount of the reimbursement instead of payment being diverted to the proper fund (see Subsection 843.030).

The Department of General Services has authorized the Attorney General to bid upon and purchase motor vehicles at a public sale conducted pursuant to an agency warrant. In order to avoid the possibility of a motor vehicle being sold for an unreasonably small amount, districts may enter a "protective" bid.

If the Board desires to enter a protective bid, the Attorney General will designate an employee, to be named by the Board, as the AG's special representative, to actually make the bid. The Headquarters Special Procedures Section will coordinate this procedure.

The maximum bid shall not exceed two-thirds of the low "as is" Kelly Blue Book value of the vehicle, or the amount of the tax, including all costs of levy, whichever is the lesser.

The district will furnish Headquarters Special Procedures Section with all pertinent information regarding an anticipated public sale. The information should include, but is not limited to:

- a) Estimated value of the vehicle and amount of proposed bid.
- b) All facts regarding third party claims.
- c) Name of Board employee who will represent the Attorney General in making the bid.
- d) Date of expected sale.

As a successful bidder, the Board employee should take possession of and deliver the vehicle to the nearest installation of the Department of General Services. The district concerned must furnish the Administrative Services Division, Accounting Section, with an itemized statement of expenditures in triplicate (letter form), including the amount bid for the motor vehicle.

The Department of General Services is prepared to handle the storage and resale of the vehicle, and the Headquarters Special Procedures Section will notify the Department of General Services of all facts concerning the purchase and proposed resale of the vehicle.

Upon reasonable prior notice, vehicles may be delivered to state garages maintained at Sacramento, San Francisco, Fresno, Los Angeles and San Diego.

Upon proper notice, the Accounting Section will issue a check for sheriff's, marshal's, constable's or California Highway Patrol fees.

The Accounting Section will obtain an advance from the State Controller in the amount needed for the revolving fund to credit the taxpayer's account with the amount of the bid, less expenses. The Accounting Section will prepare a revolving fund check for the credit of the taxpayer's account and transmit the check to the Headquarters Cashier through the Headquarters Special Procedures Section.

When a motor vehicle purchased by the Board through bid-in procedures is subsequently resold by the Department of General Services, the proceeds from the sale, which are transmitted to the Board, will be distributed as follows: (1) The revolving fund will be reimbursed for all funds advanced, and (2) the remaining funds will be transferred to the general fund.

CIGARETTE TAX LAW WARRANTS

742.070

Since the Cigarette Tax Law does not provide for advance payment of fees and expenses, the officer who will make the levy should be contacted to learn whether the levy can be made without an advance payment. If this cannot be arranged, the Special Procedures Section should be notified. The Special Procedures Section will then determine whether the matter should be referred to the Attorney General for action against the taxpayer.

STATEMENT OF COSTS REQUIRED

742.080

Whenever the Board is required to pay the costs of a levy for which no reimbursement was received as a result of the levy, a statement of charges is required. The statement must be submitted by the officer in triplicate and should be forwarded through the district office to the Special Procedures Section for approval and referral to the Accounting Office for payment if not already paid in advance. No payment will be made until the statement, in triplicate, detailing the items, has been received.

A statement is not necessary if an advance payment is made and full reimbursement is received as a result of the levy.

COSTS AS AN OBLIGATION OF THE TAXPAYER

742.090

The advance payment required, as well as any costs incurred in the use of a warrant, becomes the obligation of the taxpayer and should be collected by the officer making the levy.

Whenever costs are incurred through a levy from which no satisfaction is obtained, whether an advance was made or costs were later billed to the Board, the amount of the costs should be added to the tax liability and collected along with the tax when collection becomes possible. Those cost items are not posted to the accounts receivable, therefore, other controls must be developed by each office. When payments include reimbursement for previously paid costs, remittance advice forms will contain an explanatory statement.

**ALCOHOLIC BEVERAGE LICENSE
SUSPENSIONS AND TRANSFERS****748.000****SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE
FOR FAILURE TO FILE OR PAY SALES & USE TAXES****748.005**

Section 24205 of the Business & Professions Code provides for the suspension of any alcohol beverage license if the taxpayer is three or more months delinquent in the payment of taxes or penalties due under the Sales & Use Tax Law, the Bradley Burns Uniform Local Sales & Use Tax Law, or the Transactions & Use Tax Law, when that liability arises in whole or in part from the exercise of the privilege of an alcoholic beverage license.

Section 24205 should be utilized in every case where a taxpayer has an alcohol beverage license which is directly related to a delinquent seller's permit, is three or more calendar months delinquent in the payment or filing of taxes and is not currently making payments on an approved payment plan.

Two warning letters have been placed on ACMS DOCGEN for use in cases which have the potential for a alcohol beverage license suspension. The first letter (BOE-1495, ABC Suspension — Preliminary Notice, Delinquency) is designed to be used once an account is roughly 2 1/2 months delinquent in the filing or payment of a return (measured from the due date of the return/prepayment). This letter warns of the potential consequences of not filing and paying the delinquent return/prepayment or paying the delinquent account receivable. In the case of return delinquencies, a blurb will be attached to the delinquency citation notices which warns of the possibility that their liquor license may be suspended.

The second letter (BOE-1497, ABC Suspension — Final Notice, Delinquency) is a final notice which must be sent prior to suspension. The taxpayer must be delinquent in the filing or payment of a return for three full calendar months (measured from the due date of the return/prepayment) before this notice can be mailed. A BOE-1497 letter should always be mailed to the mailing address of record prior to suspension of the ABC license. This final letter affords the taxpayer 14 calendar days to comply before suspension.

Once the 14 days has lapsed, and the taxpayer has not paid the liability or commenced with a satisfactory payment plan, a BOE-200 should be completed and forwarded to Special Procedures for processing. Special Procedures will verify that the BOE-1497 has been sent via ACMS DOCGEN, that 14 days have lapsed, and that the taxpayer is currently three full calendar months delinquent in the payment or filing of taxes. Special Procedures will forward a memo (BOE-1499, ABC Suspension Request) to ABC, requesting that the alcoholic beverage license be suspended until further notice. If the taxpayer complies prior to issuance of the BOE-1499, notify Special Procedures immediately.

ABC will conduct a field call, confiscate the liquor license, and notify Special Procedures when completed.

Section 24205 expressly provides that reinstatement should only be allowed when the taxpayer is current on all sales & use tax returns. Once the seller has filed and paid all current sales & use tax returns, a release memo (BOE-1500, ABC Suspension Release), should be sent by the district to ABC, notifying them that the taxpayer's license should be reinstated. An exception may be allowed if the taxpayer is current on self-declared taxes, has renewed any applicable surety bond, and is making payments on an approved BOE-407 against an audit liability.

SUSPENSION OF ALCOHOLIC BEVERAGE LICENSE FOR FAILURE TO RENEW A SURETY BOND

748.006

Section 24205 of the Business & Professions Code provides for the suspension of any alcohol beverage license if the taxpayer is three or more months delinquent in the renewal of a surety bond under the Sales & Use Tax Law, the Bradley Burns Uniform Local Sales & Use Tax Law, or the Transactions & Use Tax Law, when that permit is related to the exercise of the privilege of an alcoholic beverage license.

Section 24205 should be utilized in every case where a taxpayer has an alcohol beverage license which is directly related to a delinquent seller's permit, is three calendar months delinquent in the renewal of a surety bond, and is not currently making payments on an approved payment plan to replace that bond. This avenue is not available in cases where the Board is making an initial demand for security.

Two warning letters have been placed on ACMS DOCGEN for use in cases which have the potential for a alcohol beverage license suspension. The first letter (BOE-1496, ABC Suspension — Preliminary Notice, Security) is meant to be used when the taxpayer is delinquent in the renewal of a surety bond for roughly 2 1/2 months. This letter warns of the potential consequences of not renewing or replacing the expired or void surety bond.

The second letter (BOE-1498, ABC Suspension — Final Notice, Security) is a final notice which is to be used when a taxpayer is delinquent in the renewal of a surety bond for three full calendar months. A BOE-1498 letter should always be mailed to the mailing address of record prior to suspension of the ABC license. This final letter affords the taxpayer 14 calendar days to comply before suspension.

Once the 14 days has lapsed, and the taxpayer has not replaced or renewed their surety bond, a BOE-200 should be completed and forwarded to Special Procedures for processing. Special Procedures will verify that the BOE-1498 has been sent via ACMS DOCGEN, that 14 days have lapsed, and that the taxpayer is currently three full calendar months delinquent in the renewal of their surety bond. Special Procedures will forward a memo (BOE-1499, ABC Suspension Request) to ABC, requesting that the alcoholic beverage license be suspended until further notice. If the taxpayer complies prior to issuance of the BOE-1499, notify Special Procedures immediately.

ABC will conduct a field call, confiscate the liquor license, and notify Special Procedures when completed.

Section 24205 expressly provides that reinstatement should only be allowed when the taxpayer is current on all sales & use tax returns and has filed a valid bond. Once the seller has replaced or renewed their surety bond and has filed and paid all current sales & use tax returns, a release memo (BOE-1500, ABC Suspension Release) should be sent by the district to ABC. This memo will notify ABC that the taxpayer's license should be reinstated. An exception may be allowed if the taxpayer is current on self-declared taxes, has renewed the surety bond, and is making payments on an approved BOE-407 against an audit liability.

WITHHOLD OF TRANSFER — ALCOHOLIC BEVERAGE LICENSE

748.010

Section 24049 of the Alcoholic Beverage Control Act provides for the refusal of any transfer of any alcoholic beverage license if the applicant is delinquent in the payment of any taxes due under the Alcoholic Beverage Tax Law or the Sales and Use Tax Law, as well as the Personal Income Tax Law, or the Bank and Corporation Law, or on unsecured property as defined in Section 134 of the Revenue and Taxation Code, when such tax liability arises in full or in part out of the exercise of the privilege of an alcoholic beverage license, or any amount due under the Unemployment Insurance Code when such liability arises out of the conduct of a business licensed by the Department of Alcoholic Beverage Control. This allows the Board of Equalization, through an arrangement with the Department of Alcoholic Beverage Control (ABC), to request withholds be placed against any liquor license transfers when the applicant is delinquent under any of the laws mentioned above.

For the purpose of these withholds and in cases of transfers, an applicant is deemed to be either the transferor or the transferee.

TYPES OF LIQUOR LICENSES SUBJECT TO WITHHOLDS

748.020

Limited liquor licenses are those licenses which are restricted. This type of license is issued based on the population of the county in which the business premises are located. Those which lend themselves to withhold procedures are listed by the following ABC Tax Control Codes:

- 20 Off-sale beer and wine (effected by the moratorium)
- 21 Off-Sale General
- 47 On-Sale General Eating Place
- 48 On-Sale General Public Premises
- 49 On-Sale General Seasonal
- 75 Brewpub-Restaurant

In transferring a limited liquor license for a purchase price or consideration, establishment of an escrow is mandatory with the following exceptions:

Any transfer of a liquor license made by an executor, administrator, guardian, conservator, trustee, receiver, assignor, or fiduciary who has been approved or authorized by ABC is considered to be the same as an escrow agent for the purpose of receiving withholds and release letters. Escrows are not required on premise transfers when ownership of the license remains the same.

Four types of licenses are excluded from the withhold procedure, as there is no requirement escrow information be furnished to ABC. These license codes are:

- 20 Off-sale beer and wine (not effected by the moratorium)
- 40 On-sale beer
- 41 On-sale beer and wine
- 51 Club (worth a maximum of \$350)

FORM LETTERS USED IN THE WITHHOLD PROCESS

748.030

- | Form letter BOE-871 is sent by Headquarters Special Procedures Section to ABC to request a withhold on the transfer of a liquor license. This form is prepared in sets of five to provide copies to all offices concerned.
- | Form BOE-872, Release of Withhold, is used by the district offices to notify ABC to release a withhold placed against the transfer of a liquor license.
- | Form BOE-872-A, Escrow Instructions and Demand, is used to inform the escrow agent of requirements which need to be met prior to the transfer of the liquor license.
- | Form BOE-872 will accompany Form BOE-872-A, Escrow Instructions and Demand, to the escrow holder if a demand has been made to the escrow agent because of a liability against an account. If all liabilities against an account have previously been cleared, Form BOE-872, Release of Withhold, will be forwarded to ABC so the liquor license may be transferred.
- | Form BOE-1031, Transfer of Liquor License — Audit Decision, is a district office form used by compliance to notify auditing an application to transfer a liquor license has been filed.

TRANSFER WITHHOLDS

748.040

District offices and Headquarters Special Procedures Section share responsibility with respect to the placing of withholds against the transfer of certain types of liquor licenses.

The knowledge a license transfer application has been made will come, for the most part, from daily information sent to the Headquarters Special Procedures Section from ABC Headquarters. Each of the ABC district offices will send daily notices of license transfer applications to ABC Headquarters who will, in turn, transmit the information to the Headquarters Special Procedures Section on a rush basis.

The Headquarters Special Procedures Section will determine account numbers and check for reporting delinquencies and final liabilities. A liquor license withhold will be placed only when the license transferring has a reporting delinquency or a final liability exists. When the determination is made to place a withhold on a liquor license by Headquarters Special Procedures Section's review, a Form BT-871, Flag Withhold Letter, will immediately be sent to ABC headquarters, Sacramento, copying the Board district office for their information.

Where no reporting delinquency or final liability exists, Headquarters Special Procedures Section will forward notice of the license application transfer to the district office for any action deemed necessary.

When there is a pending liquor license transfer and the Board has a withhold on the license, the district will notify, by letter, all interested parties and inform them a tax liability exists which must be cleared prior to the withhold being removed and the license being transferred.

WITHHOLD, DEMAND AND RELEASE PROCEDURE

748.050

- | ABC will send to Headquarters Special Procedures Section two copies of the application to transfer the license upon receipt of Form BT-871, Flag Withhold Letter. The Headquarters Special Procedures Section will refer this information to the district.

Since a liquor license can transfer no earlier than 30 days from date of application to transfer, the district must make every effort to clear delinquent periods, search for related accounts which may be involved and when final liability is determined, send Form BT-872,

COLLECTIONS

WITHHOLD, DEMAND AND RELEASE PROCEDURE

(CONT.) 748.050

Release of Withhold, and Form BT-872-A, Escrow Instructions and Demand, to the escrow holder. In cases where the escrow is not being handled by an escrow company, bank, etc., only the Form BT-872-A, Escrow Instructions and Demand, should be presented to the escrow holder. The Form BT-872, Release of Withhold, should be held pending payment of the demand.

If demand and release are not forwarded to the escrow holder within 30 days, ABC may allow the license to transfer without payment.

When the escrow holder is in a position to disburse funds, payment will be made to the Board pursuant to the instructions contained on the Form BT-872-A; and the escrow holder, except as noted above, will simultaneously forward the Form BT-872, Release of Withhold, to ABC, Sacramento. ABC will then remove the withhold on the transfer of the liquor license.

DISTRICT OFFICE RESPONSIBILITY

748.060

When a district determines a withhold needs to be placed on the transfer of a liquor license, the district will notify the Headquarters Special Procedures Section either by telephone, Form BT-200, Check List Request for Collection Action, or a mini-memo. The taxpayer's name, account number, liquor license number, and reason for withhold must be given in the request.

Each district is responsible for their own follow-up on liquor license withholds. Any other agency which may place a withhold has thirty days from the date the transfer application is filed with ABC in which to file their release and demand request with the escrow holder. Where possible, any and all action taken early on will aid ABC in concluding the transfer. If it appears an audit may be warranted, the district audit staff will be notified immediately by Form BT-1031, Transfer of Liquor License — Audit Decision.

When Form BT-1031 is received by the audit staff, an audit will be promptly initiated or an audit waiver will be obtained.

If the district finds additional liabilities within the allotted time or before all the funds are disbursed, an amended demand should be made on the escrow agent.

When a license withhold cannot be placed because no delinquencies exist either with respect to reporting or final liabilities at the time the application for transfer is made, full consideration must be given to bringing into play the provisions of Sales and Use Tax Law Section 6813, Certificate. The Board has the ability to demand security be posted in order to issue a Certificate of Tax Clearance allowing the escrow to proceed with the transfer of the business and the liquor license.

The need may also arise to consider the issuance of a jeopardy determination so a withhold may be placed on the transfer to thwart an imminent seizure of the license by the Internal Revenue Service or its demands against escrow proceeds where its lien priority would be senior to that of the Board. Jeopardy determinations should not be used to establish final liabilities in the normal course of events.

There should be no need for a withhold when the notice of transfer indicates a "self" incorporation, that is, an individual or partnership holding the license is incorporating since, generally, the corporation is considered a successor to the original holder of the license and will be billed as such. Should the corporation then sell the license while still owing a successor's liability, the withhold is in order.

COMPLIANCE POLICY AND PROCEDURES MANUAL

MISCELLANEOUS INFORMATION — LIQUOR LICENSE WITHHOLD

748.070

If an application is denied or withdrawn, one-fourth of the license fee paid, or not more than \$25, shall be deposited in the General Fund. The balance of this amount shall be credited to any taxes due from an applicant under other state laws, where applicable, and the remaining portion shall be returned to the applicant.

From time to time, the necessity to expedite a release of a liquor license withhold by a telephone call to ABC headquarters in Sacramento may arise. Districts, after assuring the rush release is mandatory, will contact the Headquarters Special Procedures Section. An authorized person from the Headquarters Special Procedures Section will call ABC and the license will be released.

REMINDER TO THE DISTRICT OFFICES — LIQUOR LICENSE WITHHOLDS

748.080

The following information is included as guidelines for districts considering the placing of withholds against liquor licenses.

Withholds are not placed against renewals of liquor licenses.

After considering all factors, including application of cash deposits, withholds will not be requested on balances less than \$100.

A withhold should not be requested unless all or part of the liability or delinquency arose from the operation of a business requiring the holding of a liquor license.

No withhold on the transfer of a liquor license will be made unless there is an application for the transfer on the license.

No withhold on the transfer of a license will be made unless a reporting delinquency or final liability exists.

BANKRUPTCIES INVOLVING LIQUOR LICENSES

748.090

Normally, penalty and post-bankruptcy interest are charges which are not allowable in bankruptcy claims. However, if the bankrupt was the holder of a liquor license which has been sold by the trustee, a withhold will be placed against the transfer and will not be removed until the total liability, including all penalty and interest to the date of payment, has been paid, regardless of the amount included in any bankruptcy priority claim previously filed. If the amount realized from the sale of the license is inadequate to pay the total amount due, release of the withhold must be given on the basis of the sales price of the license rather than the amount of the tax liability.

ESCROWS

748.100

Under the withhold procedure, a claim is made directly upon funds held in escrow pending transfer of the liquor license. Demand and release instructions (Forms BT-872 and BT-872-A) are made directly to the escrow agent who, upon payment of the demand, will send the Release of Withhold to Headquarters, ABC, Sacramento.

If escrow funds are inadequate to pay in full the claims of all agencies which have withholds against the license transfer, Headquarters Special Procedures Section will be contacted to arrange a prorated amount of available funds. The information required includes the total selling price of the license, amount of escrow fee, which other agencies have claims in the escrow, and the name and address of the escrow company.

COLLECTIONS

INSTALLMENTS — LIQUOR LICENSE WITHHOLDS

748.110

Under no circumstances should an installment proposal be accepted when the debtor is the transferor. The transferor is receiving a consideration for the sale of the license and the liability should be paid out of the proceeds.

If the delinquent taxpayer is the transferee and an investigation discloses an inability to pay the obligation, even though acquiring a license, a report and recommendation should be forwarded to Headquarters Special Procedures Section. In certain unusual situations of this kind, the acceptance of a proposal for payment will be in order since the license represents an asset which might, at a later date, be helpful in clearing the account. In such cases, a withhold will not be removed unless a substantial initial payment has been received.

PAYMENT FOR RELEASE OF WITHHOLD — LIQUOR LICENSE

748.120

Payment by personal check should not be accepted to release a license. An escrow check or a check from a source representing funds held in trust would be acceptable.

INTERNAL REVENUE SEIZURE AND SALE — LIQUOR LICENSE

748.130

The Internal Revenue Service can seize and sell the liquor license of any person who is delinquent in the payment of federal taxes. To transfer the license once the license has been sold, the Internal Revenue Service and the buyer must open an escrow account with a bona fide escrow holder. The transfer of the license must be processed through ABC. The buyer and the details of the transfer must meet the same requirements as in any other liquor license transfer. District offices will be notified by Form BT-871 of these pending transfers in the same manner as in the transfer of other licenses.

When a district becomes aware of the fact the Internal Revenue Service has seized the license, a withhold on the transfer of the license will be requested when application for transfer is made providing a reporting delinquency or delinquent liability exists. After the district has been notified of the pending transfer by Form BT-871, the release and demand forms, Forms BT-872 and BT-872-A, will be sent to the escrow holder. A release and demand will never be deposited with the Internal Revenue Service even though they may be requested.

ABC DAILY TRANSMITTALS**748.140**

All ABC district and branch offices daily type a transmittal which shows new license requests, transfer applications (including name and address of transferor and transferee) and temporary applications.

This information is sent to ABC Headquarters in Sacramento for immediate forwarding to the Board's Headquarters Special Procedures Section (see Subsection **748.040**, Transfer Withholds). Some Board district offices formerly received copies of the transmittals directly from their neighboring ABC district office. This will no longer officially occur since Headquarters Special Procedures Section will forward copies of the transmittals to districts when received from ABC Headquarters.

ABC district/branch offices are at the following locations:

Northern California

Fresno
Oakland
Sacramento
San Francisco
San Jose
Salinas
Santa Rosa
Eureka
Stockton
Yuba City
Redding

Southern California

Bakersfield
El Monte
Inglewood
Long Beach
Los Angeles/Wilshire
Rancho Mirage
San Bernardino
Indio
San Diego
Santa Ana
Santa Barbara
San Luis Obispo
Van Nuys

REVOCATION**751.000****GENERAL****751.010**

The revocation procedure, when used properly and with due impressiveness, can be a very useful collection aid (see Subsection 360.000 et seq.). If delinquent taxpayers realize they will not be permitted to operate after revocation, there will be, in most cases, a stronger inclination to pay the amount due. On the other hand, if the representative, in dealings with the taxpayer, treats the revocation process lightly, the taxpayer will be encouraged to do likewise.

Unless the debtor is made to understand the seriousness of the revocation, the action will be meaningless and wasted. Additionally, if there is a consistent failure to enforce the revocation, the apathy, in this respect, can become a matter of common knowledge among taxpayers and thereby add to the over-all burden of obtaining compliance.

REASONS FOR REVOCATIONS**751.020**

Whenever any person fails to comply with any of the provisions of the law under which a permit or license is held, the Board, upon hearing for which 10 days notice has been given, may revoke the permit or license. The responsibility for conducting the hearings is delegated to the business taxes administrators or their representatives. Hearings are held at the district or branch office. Causes for revocation include failure to file and pay tax return(s), failure to pay a balance, failure to post required security, failure to keep or make available proper records, or failure to surrender permit for cancellation when not actively engaged in business as a seller of tangible personal property, or for violation of any provision of the applicable law.

INITIATION OF REVOCATION ACTION**751.030**

In cases of failure to file and pay returns, the revocation action is an automated process supervised by Headquarters Account Analysis and Control Section.

For a cause other than failure to file a return(s), i.e., security, failure to comply, etc., the revocation action is initiated by district office personnel through the Delinquency On-line System.

BALANCE REVOCATION REQUESTS**751.040**

If the reason for the revocation must be changed from failure to file returns(s) to a balance revocation, the change must be done prior to revocation notices being produced for the list number in which the account was cited for failure to file return(s). This date can be determined by referring to the Calendar of Sales Tax Tax Functions. Copies of the calendar are sent to each district office annually. The Delinquency 0 display of BTCIS also shows the process dates of the next revocation list. All delinquency on-line transactions must be processed prior to 5:00 P.M. on the date revocations are produced.

MINIMUM AMOUNTS**751.045**

Unless there are extenuating circumstances present, accounts will not be routinely scheduled for revocation unless the amount owing is \$100 or more. When districts request revocation action on an account owing less than \$100, the circumstances which warrant the action should be explained in the request.

HEARING NOTICES

751.050

All hearing notices are mailed by Headquarters. These cite the taxpayer to appear for a hearing before the appropriate person in the district office to show cause why the permit or license should not be revoked for the cause specified in the notice.

Each of the laws which provide for this method of revocation require the person be given 10 days notice in writing, of the time and place of hearing. Notice is served by placing the notice in the mail addressed to the taxpayer's address of record.

EFFECTIVE DATE OF REVOCATIONS

751.060

Revocations are effective on the dates set forth in the Calendar of Sales Tax Tax Functions. For those business taxes where an effective revocation date is not shown, the effective date of revocation will be 60 days following the mail date of the hearing notice. If the cause of revocation is cleared in its entirety on or before the effective date of revocation, and the information is available in Headquarters, the notice will not be mailed. If the notice is mailed, the revocation will be considered inoperative upon receipt of notification to the taxpayer from the district office on Form BT-16, Notice of Inoperative Revocation.

EFFECT OF REVOCATION

751.070

Upon service of the revocation notice, all of the rights or privileges granted under a particular law are revoked or suspended until the license or permit is properly reinstated. Operation after revocation constitutes a misdemeanor. Taxpayers or officers of a corporation who continue operations after revocation are liable for prosecution.

REVOCATIONS — INITIAL CLEARING PROCESS

751.075

Revocations should be worked inside initially, and only those cases which require personal contact should be taken to the field. If there is an existing assignment on an account which is currently being handled in the field, or if file history shows inside clearance attempts would be nonproductive, the revocation should immediately be taken to the field for clearance.

On those revocations initially worked in-house, a telephone call should be made to attempt contact for the purpose of informing the taxpayer of the consequences of operating with a revoked permit, the requirements to reinstate the permit and to obtain a commitment to perform. Timely follow-ups must be maintained.

If the taxpayer is contacted on the first telephone call but fails to perform, a second telephone call, followed with a Notice to Appear within one week, is recommended, unless there is prior indication that the taxpayer will not respond to this type of action.

Additional telephone calls are recommended if there is no contact with the permit holder on the first call. These calls would be to the business, to the residence, or to any other leads you may have.

Special, irregular hours may be required to reach taxpayers who are not available during normal business hours.

The new "Current Revocation List" should be reviewed by a supervisor to identify chronic accounts for priority handling and immediate field action. The current and aged revocation lists should be used to monitor the revocation program on a monthly basis. All aged revocations should be regularly reviewed by a compliance supervisor with the compliance person who is assigned the case. Staff meetings to discuss any particular problems with accounts or procedures are recommended as a supplement to the monthly review.

COLLECTIONS

PROSECUTIONS, OPERATING AFTER REVOCATION

751.080

When all other remedies have been exhausted, aid of the court may be required to bring about compliance.

CONDITIONS OF REINSTATEMENT

751.090

By the time hearings are held, each taxpayer will have had a sufficient period of time in which to have paid any amount due. Therefore, do not clear delinquency records on the basis of a mere promise to pay or to start paying at a future date.

To reinstate a revoked account, the taxpayer must:

- a. Clear the cause for revocation.
- b. File all delinquent returns and pay the taxes, penalty and interest due.
- c. Pay all delinquent balances due according to the records of the Board.
- d. Post required or additional security on sales tax accounts. Arrangements may be accepted in lieu of security at district discretion.
- e. Pay the reinstatement fee and complete any required forms.

The taxpayer may be requested to comply with any other provisions of the laws or regulations such as keeping adequate records or reporting tax liability according to prescribed rulings.

If the delinquency record is to be cleared on the basis of an installment proposal, supervisory approval and a substantial initial payment should be obtained. The amount of the payment and terms of the proposal should be documented on Form BT-407, Installment Payment Proposal. Unless payment and acceptable arrangements are received, the account should be revoked.

When all conditions for reinstatement are met and the reinstatement fee has been collected, the permit or license will be reinstated. A fee must be collected if the taxpayer operated the business while revoked and closes out the account before reinstating.

If the taxpayer files bankruptcy, the account will be reinstated without any of the above conditions being met. Form BT-16 will be prepared as outlined in Section 360.130. A bankruptcy withhold will be added to the account by district office personnel through the use of the Delinquency On-line System. This does not restrict effort to clear delinquent periods.

After reinstatement, should the taxpayer fail or refuse to respond to any demand for compliance with the law or regulations, revocation proceedings should again be instituted, citing expressly in the show-cause notice of hearing the particular causes for which the permit is proposed to be revoked.

REINSTATEMENTS AFTER REVOCATION — FEES

751.100

Reinstatement after revocation requires a \$50 fee under the provisions of the Sales and Use Tax Law for each seller's permit. In the case of sales and use tax consolidated permits, the district will determine the number of subpermits to be reinstated and collect a \$50 fee for each, including any which have closed after the date of revocation. The total amount of fees will be entered on Form BT-400 REIN.

REINSTATEMENT — FORMS REQUIRED

751.110

To reinstate a revoked sales tax permit the use of the application Form BT-400-REIN is mandatory. The BT-400-REIN is then sent to Headquarters Cashier with the reinstatement fee and the revocation is cleared via the On-Line Delinquency program. Care should be taken to verify there has been no change of ownership.

PAYMENTS RECEIVED DURING REVOCATION

751.120

While the revocation is in force, the district should attempt to obtain cash, certified or cashier's check or money order in payment of liabilities and reinstatement fee(s). However, Government Code Section 6157 requires the State to accept personal checks if the person issuing the check furnishes proof of California residence and the check is drawn on a California banking institution. Once a check is returned without payment, the Board is no longer required to accept personal checks.

If the taxpayer insists on providing a personal or business check, or one is mailed to the district office and the taxpayer does not have a history of returned checks, the compliance supervisor may approve acceptance. Guidelines for acceptance of personal checks in the field, verification of checks and placement of holds on funds should be established by the compliance supervisor.

When return(s) and a personal or business check needed to clear a revocation have been mailed to headquarters, the taxpayer normally should not be required to stop payment on the check and pay in certified funds. Such a delay could result in the assessment of additional penalty and interest charges (see Subsection 510.150). If the taxpayer's prior record does not justify immediate reinstatement, Form BT-404 (Reinstatement Fee Action) should be processed.

INOPERATIVE REVOCATIONS

751.130

A revocation for failure to file and pay a return is considered inoperative only if the return and all taxes owing for a particular period are paid on or before the effective date of the revocation. Revocation of a permit is considered inoperative if the person has terminated his/her operations before the effective date of revocation. In this case the on-line close-out process will clear the revocation from the Board's records. The revocation is considered valid only when the revocation notice is mailed to the taxpayer's address of record. If there has been a change in the business location and the notice of revocation was mailed to the former address, the revocation can only be considered inoperative if the Board received notice of the move prior to the effective date of revocation. Letters informing the Board of the change, Post Office Department Form 3573 sent to the Board, and returns with the address crossed out (and the forwarding address has been inserted) are all considered to be notices of a move. If the Board did not receive notice of the move prior to the effective date of revocation, then the revocation is operative and the conditions of reinstatement must be met.

Inoperative revocations occur because the taxpayer's action to clear the cause of revocation, although prior to the effective date of the revocation, is too late to prevent the recording of the revocation and the mailing of the notice. If the taxpayer is shown as revoked on the delinquent record, the district office will notify the taxpayer the revocation is inoperative through the use of Form BT-16, Notice of Inoperative Revocation. However, the duplicate copy will no longer be sent to Headquarters Account Analysis and Control Section.

An inoperative revocation will be generated when the taxpayer files bankruptcy. At the same time the BT-16 is done, a BT-143 should be done, if appropriate, and the bankruptcy withhold should be placed on the account via the Delinquency On-line System.

The inoperative revocation can be cleared from the computer through the Delinquency On-line System. Processing the revocation clearance transaction will clear the revocation and place a one-month withhold on the account. Detailed instructions concerning the Delinquency On-line System can be found in the Delinquency On-line User's Guide.

COLLECTIONS

FORM LETTERS TO SUPPLIERS OF REVOKED ACCOUNTS AND SWAP MEET OPERATORS

751.140

Form BT-570-A advises the supplier a taxpayer's seller's permit has been revoked and a resale certificate may no longer be accepted. The letter is particularly useful when dealing with revoked service stations, bars, restaurants, hotels, franchised businesses (fast foods, convenience stores, etc.) and other sellers having only one or a limited number of principal suppliers. What happens, in a good number of cases, is the person's supply source is cut off. Form BT-570-B references Form BT-570-A and advises the supplier they may again accept a resale certificate. Form BT-570-B is mailed when the reinstatement is completed. It is extremely important the Form BT-570-B letter be executed promptly when the revocation is cleared.

These form letters should be used in-lieu of district forms of the same nature. The letters should be used in selected cases, and not as replacement to normal procedures in clearing revocations.

PRE-PROSECUTION HEARING

751.150

Prior to prosecution of a revoked account, you should attempt compliance through the use of a pre-prosecution letter and hearing (see Exhibit A).

The following guidelines apply to the use of this procedure:

- (1) Use only when failure to comply will result in actual prosecution by the city/district attorney.
- (2) When a corporation is involved, send a letter to all corporate officers at their home address, as well as to the corporation.
- (3) Each letter should be individually typed.
- (4) No more than one week should be allowed for the taxpayer to appear.

COMPLIANCE POLICY AND PROCEDURES MANUAL

EXHIBIT A

STATE OF CALIFORNIA

Address of Board Office

City, State, Zip

Phone

Taxpayer

Address of Record

City, State, Zip

Account Number: SR KH 28-123456

NOTICE OF PRE-PROSECUTION HEARING

Section 6071 of the Revenue and Taxation Code states that any person who engages in business as a seller of tangible personal property in this state after a permit is revoked, and each officer of a corporation which so engages in business, is guilty of a misdemeanor.

Your seller's permit was revoked _____; you were personally notified on _____ and evidence of sales of tangible personal property was obtained on _____. These sales constitute unlawful acts and are punishable by prosecution under the penal provisions of the Code.

Therefore, you are hereby requested to appear to show cause why you should not be prosecuted, at the State Board of Equalization (insert address of office), (city, state, zip) California at (date and time).

Sincerely,

Business Taxes Compliance Supervisor

GE:tt

cc: Deputy District Attorney

BANKRUPTCIES, ASSIGNMENTS AND PROBATES**754.000****GENERAL****754.010**

To receive payments from the assets available in bankruptcy, assignment and probate estates, formal claims must be filed by all creditors including taxing agencies. Claims for taxes which are filed against estates have priority over certain other claims. Therefore, when a taxpayer becomes involved in one or more of these types of proceedings and owes a liability, a claim should be filed in the estate. If through error no claim is filed, collection in most cases will be difficult or impossible.

District offices have the responsibility for discovering legal proceedings involving taxpayers under permit, license, or who owe a balance. This information may be obtained from various publications which furnish this type of information. The information might also be obtained from the taxpayer, business associates, other creditors, or through other informal sources.

All formal claims, where collection of the tax is the responsibility of the Board, are prepared and filed by the Headquarters Special Procedures Section based upon information furnished by the district office. Generally, claims for tax and pre-petition interest over \$500 will be filed in any proceeding. The Headquarters Special Procedures Section is responsible for following these claims, with the assistance and cooperation of the district offices. The Headquarters Special Procedures Section will notify the districts when to proceed with collection action under personal liability.

Preparation, filing and follow-up of all formal claims for gasoline (motor vehicle fuel) taxes are the responsibility of the State Controller.

GLOSSARY OF BANKRUPT TERMS**754.020**

Order for Relief — A determination, whether by decree or by operation of law, that a person is a bankrupt.

Reorganization (Chapter 11) — Any plan of a debtor for settlement, satisfaction, or extension of the time of payment of his unsecured debts upon any terms.

Assets Abandoned by Court — The trustee in bankruptcy may decide not to include certain assets of the bankrupt as part of the estate. For example, the debtor may not have sufficient equity in certain property to make inclusion of the property in the estate worthwhile. The trustee would then petition the court for abandonment of the assets and, if approved, they are released from the estate.

Bar Date — The date by which a claim must be filed.

Chapter 7 — Liquidation.

Chapter 11 — Reorganization.

Chapter 12 — Adjustment of Debts of a Family Farmer with Regular Annual Income.

Chapter 13 — Individual Repayment Plan.

Claims in Bankruptcy — Filed by the Board.

Proof of Lien Claim — Secured claim when property on which the Board has a lien becomes an asset of the bankrupt estate.

Proof of Priority Claim — A claim asserting that the amounts owing comprise state taxes. Taxes have a certain priority by law in the distribution of bankruptcy assets.

COMPLIANCE POLICY AND PROCEDURES MANUAL

GLOSSARY OF BANKRUPT TERMS

(CONT.) 754.020

Expense of Administration Claim — A claim filed in a bankruptcy proceeding having a higher priority than a proof of priority claim, such as a claim for tax liability incurred during the administration of the estate.

Date of Order for Relief — The date of filing of any voluntary petition which operates as the decree date of a bankruptcy court.

Debtor — The subject of a bankruptcy case.

Discharge — The release of a debtor from all his/her debts which are subject to relief in bankruptcy, except those excepted by the Bankruptcy Code. The act whereby certain debts are forever forgiven.

Involuntary Bankruptcy — A petition filed by creditors seeking an order for relief when:

1. The debtor is generally not paying its debts as they mature; or
2. A custodian was appointed or took possession during the 120 day period preceeding the filing of the petition. (If a custodian of all or substantially all of the property of the debtor has been appointed, the debtor's creditors have an absolute right to have the liquidation proceed in the bankruptcy court.)

When dealing with an involuntary petition, two Form BT-143's, Information — Bankrupt, Assignor, Receiver or Decedent, need to be filed. The first Form BT-143 will indicate the date the involuntary petition was filed. The second Form BT-143 will indicate the date an Order for Relief under either Chapter 7, Liquidation, or Chapter 11, Reorganization, of the Bankruptcy Code was entered by the Court.

Three or more creditors must file a petition. The amount owed to all of them must aggregate \$5,000 more than the value of any lien securing their claims unless all creditors total less than 12, in which case, one or more creditors may file petition provided the claim or claims total \$5,000 or more.

Section 303 of the Bankruptcy Code covers involuntary bankruptcies and should be referred to when dealing with these types of cases. When the situation involving an involuntary case arises, Section 303(f) becomes very important. This section says in part "...except to the extent that the court orders otherwise, and until an order for relief in the case, any business of the debtor may continue to operate, and the debtor may continue to use, acquire, or dispose of property as if an involuntary case concerning the debtor had not been commenced."

Petition — A pleading which commences a case under the Bankruptcy Code.

Priority — Order of

1. Expense of Administration.
2. A creditor's claim which arises (in involuntary case) in the ordinary course of the debtor's business after the petition is filed but prior to the appointment of a trustee and the order for relief (called a "GAP PERIOD" claim).
3. Wages and commissions not exceeding \$2,000 earned within three (3) months prior to petition.
4. Certain contributions to employee benefit plans arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first.
5. Certain claims of producers of grain and U.S. fishermen.
6. Consumer creditors who have paid money for the purchase or rental of property or a service that has not been delivered, not to exceed \$900 for each individual.
7. Taxes legally due and owing the United States, any state or subdivision thereof.

Trustee in Bankruptcy — Assumes control of all assets of debtor and administers the estate. Sometimes the trustee will personally operate the business when this is practical to conservation of assets (see Section **754.155** concerning need for a permit).

Voluntary Bankruptcy — Taxpayer files petition.

OBTAINING INFORMATION AND REPORTING TO HQ SPECIAL PROCEDURES SECTION

754.030 |

Promptly upon learning the estate of a taxpayer is involved in bankruptcy, assignment, or probate proceedings, the district office will obtain the required information and complete Form BT-143, Information – Bankrupt, Assignor, Receiver, or Decedent. Form BT-143 is to be used for all taxes administered by the Board. Care must be taken to ensure all information is entered on the form. All blanks should be completed with the required data or marked N/A if not applicable.

In bankruptcy cases, the information can generally be obtained from the trustee or records of the bankruptcy court.

In probate cases, complete information can be obtained from the probate court records available in the county in which the estate is being probated.

In cases of general assignments for the benefit of creditors, the only information other than the general information required in all legal cases is the name and address of the assignee and the date of the assignment. Frequently, if information is not complete from the original source, the remaining information can be obtained through a telephone call to appropriate offices or persons, thereby making time-consuming field assignments unnecessary.

Form BT-143 should not be prepared for Chapter 7 cases or for probate cases if the account is closed, all returns have been filed and paid and a close-out audit is either completed and paid or has been waived, or the court has indicated the case is a no asset case.

COMPLIANCE POLICY AND PROCEDURES MANUAL

OBTAINING INFORMATION AND REPORTING TO HQ SPECIAL PROCEDURES SECTION

(CONT.) 754.030

Bankruptcy notices are sent to the Headquarters Account Analysis and Control Section by the eleven California courts. The Headquarters Account Analysis and Control Section will screen these bankruptcy notices on a priority basis, including conversion from one chapter to another. All notices indicating assets or the probability the debtor holds a permit with the Board will be searched for account numbers. Notices developing a permit number will be sent to the district for their immediate action. The completed Form BT-143, including BAR DATE, if available, will be forwarded to Headquarters Special Procedures Section as quickly as possible so a "Legal Follow Up" may be established on the account. This follow-up will generally set a date one month prior to the last date (the Bar Date) a claim can be filed. Headquarters Special Procedures Section will review the account and cause a claim to be prepared for filing in the debtor's estate.

Districts must have all delinquencies cleared, audits completed, and the figures made available to Headquarters Special Procedures Section not less than 30 days before the final date to file claims (Bar Date). If delinquent returns are received within six (6) weeks of the Bar Date, a copy of each return must be sent directly to the Headquarters Special Procedures Section after the appropriate "NR" or "PR" comments have been entered. If a BT-1043-D is prepared within 6 weeks of the Bar Date, a copy should be sent to the Audit Review and Refund Section for their information. If the situation arises where, in order to file a timely claim, a BT-414-B, Field Billing Order, must be phoned in, the BT-414-B should then be sent to Audit Review and Refund Section, with an informational copy to the Headquarters Special Procedures Section.

No follow-up will be made by Headquarters Special Procedures Section regarding clearance of delinquencies, completion- of audits, etc. The acceleration of time in which to file claims precludes such inquiry.

PROCEDURE WHEN AUDIT IS TO BE MADE

754.040

In all cases where an audit is intended, the completed Form BT-143 will be forwarded to the Headquarters Special Procedures Section promptly so a proper control can be established for the timely filing of a claim. When referring a case to the audit section, a notation should be made that the deadline for the receipt of the audit in headquarters is one month prior to the Bar Date. For bankruptcy petitions filed on or after October 22, 1994, it is not a violation of the automatic stay for the Board, or any other governmental unit, to conduct an audit to determine a tax liability.

In all cases where an audit is to be made, it is important to determine the location of the records. This will expedite the audit process in as much as the auditor will not have to locate the books and records. The person who has possession of the records should also be notified whether or not an audit is intended.

COLLECTIONS

PROCEDURE WHEN NO AUDIT IS TO BE MADE

754.050

In Chapter 7 and probate cases, when the court indicates a no asset situation, Form BT-143 will not be forwarded to the Headquarters Special Procedures Section. If subsequent information is received from the Court identifying assets in the case, the Form BT-143 should be prepared and forwarded to Headquarters Special Procedures Section.

If, in Chapter 7 or a probate case, a conclusion is made no audit is necessary, there is no liability, or security is adequate to clear any liability, no Form BT-143 will be sent to the Headquarters Special Procedures Section (see Section **754.060** concerning disposition of available security). If other than a Chapter 7 or probate case, a completed Form BT-143 should be sent to the Headquarters Special Procedures Section.

If no audit is to be made and there is a liability which is not covered by security, or only partially covered, Form BT-143 will be sent to the Headquarters Special Procedures Section, promptly, so a claim can be filed.

PROCEDURE WHEN PRE/POST PETITION (SPLIT) RETURNS NOT YET FILED

754.055

When Form BT-143 is being prepared, a check should be made to see if split returns are required (petition date falls within a return period). If split returns are required, district responsibility is to contact the taxpayer to obtain the returns or establish follow-up controls to be sure the returns are filed. The post-petition period begins with the petition date. When pre-petition returns cannot be obtained with adequate time (two weeks) for Special Procedures to file a claim, preparation of an on-line BT-1043-D should be considered.

DISPOSITION OF SECURITY

754.060

When disposing of security at the time of close-out in bankruptcy, assignment and probate cases, the security must be returned in care of the representative who is entitled to receive it, even though the checks are made payable to the entity which posted the security.

In bankruptcy cases, when the account is closed out with no delinquencies or liabilities pending or otherwise, the security should be returned in care of the bankruptcy trustee. This procedure will also be followed when the security was posted by a partnership and not all the members of the partnership are bankrupt.

In assignment cases, return of security will be made in care of the assignee.

In probate cases, the security will be returned in care of the attorney representing the estate of the deceased taxpayer. If the security was posted by a partnership and one of the partners is deceased, the security will be returned in care of the surviving partner or partners.

FINAL CLAIM DATES, BANKRUPTCIES

754.070

Chapter 7 (Liquidation)

- A. Bar Date — The Board's claim must be filed within 180 days after the filing of the debtor's bankruptcy petition. Caution: not all courts are honoring the 180 day period. Check with Special Procedures for the bar date being used at specific courts.
- B. The Board may file a late claim as long as it is filed before the trustee makes any distribution.
- C. If the case was originally designated as a no asset case and the Board did not file a claim, the court will serve notice if the subsequent payment of a dividend appears possible. The court shall fix the time for filing these claims. The fixed Bar Date must be noted in the comment section of Form BT-143.

Chapter 11 (Reorganization)

- A. Bar Date — The Board has 180 days to file proof of claim. However, the Board's claim and amendments to the claim should be filed prior to approval of the disclosure statement. **Caution:** not all courts are honoring the 180 day period. Check with Special Procedures for the bar date being used at specific courts.
 - 1. The court may fix a different bar date for the filing of claims on appropriate notice.
- B. If scheduled by the debtor, a claim may be filed within 30 days after the date of mailing notice of confirmation, but will not be allowed for an amount in excess of that set forth in the debtor's schedules. (Must be scheduled as undisputed, not contingent, and liquidated as to amount.)
- C. A proof of claim is considered filed if it appears in the schedules of the debtor unless scheduled as disputed, contingent, or unliquidated.
- D. A trustee or debtor may file a claim on behalf of the Board.
- E. An equity security holder (surety) may file a claim on behalf of the Board.

Claims filed by trustees, surety, or scheduled by the debtor should be checked and amended if necessary.

Chapter 13 (Adjustment of Debts of an Individual with Regular Income)

- A. Bar Date — The Board's claim must be filed within 180 days after the filing of the debtor's bankruptcy petition. Caution: not all courts are honoring the 180 day period. Check with Special Procedures for the bar date being used at specific courts.
- B. The time period shown in A may be extended by application to the court. The court may, for good cause, grant a reasonable, fixed extension of time for the filing of a claim by the state. (Application must be made within original 180 days.) To gain this extension, the matter must be referred to the office of the Attorney General. The need for an extension would probably be recognized rather late in the 180 day interval. This makes the referral and the Attorney General's ability to respond in a timely manner difficult. These extensions will not be requested if the delay is due to the Board's failure to expedite handling of the case.

Rules of Bankruptcy

- A. The Rules of Bankruptcy Procedure set the time limits, the form, and the procedure for filing claims. Any questions should be referred to the Headquarters Special Procedures Section. A close inspection of each bankruptcy notice must be made by the district office to ensure bar dates are set properly.

COLLECTIONS

FINAL CLAIM DATES — ASSIGNMENTS

754.080

Since an assignment for the benefit of creditors can be considered an act of bankruptcy, the assignment proceedings are required to remain open for at least four months. Although tax claims filed with assignees may be honored after the four-month period, there is always the risk funds might be disbursed promptly after the passage of the minimum amount of time. Therefore, in every assignment case, claims should be filed within four months from the date of the assignment.

The district office should attempt to determine promptly the full liability in each case after an assignment has been made, and have this information transmitted to Headquarters Special Procedures Section in sufficient time to file a timely claim, should one be necessary.

FINAL CLAIM DATES — PROBATE

754.090

The Probate Code requires claims against the estate of a decedent for taxes due under the laws administered by the Board be mailed within four months after such written request for a determination is received in a form required by the Board. This request must be made by the fiduciary of the estate or trust, or the fiduciary's attorney.

The four-month period within which a Board claim for taxes must be filed does not start to run until the receipt of the written request from the fiduciary for the issuance of a determination. If the request for prompt determination is received in the field, the request will be forwarded to Headquarters Special Procedures Section. The policy of the Board is to always strive to have any probate claim placed on file within four months from the date of the first publication of notice to creditors, whether a written request is received or not. Therefore, the field should promptly determine the full liability in each probate case and forward the information to Headquarters Special Procedures Section in sufficient time to file a timely claim.

Receipt of Form BT-1382, Request for Prompt Determination, does not replace Form BT-143, Information — Bankrupt, Assignor, Receiver, or Decedent. Form BT-143 will still be completed and forwarded to Headquarters Special Procedures Section for accounts where an estate is under probate. Form BT-143 need not be sent to Headquarters Special Procedures Section in the case of the death of a taxpayer whose estate will not be probated.

SUSPENSION OF COLLECTION EFFORT

754.100

When a taxpayer is found to be owing a delinquent balance while in bankruptcy, assignment, or probate proceedings, the general policy is to suspend all collection activity against the person(s) involved during the pendency of the proceedings. Under no circumstances should any summary action be attempted against any of the assets which constitute a part of the estate. However, since October 22, 1994, the Board can make demand for returns, make assessments, issue determinations, and demand for payment — all post-petition. Liens still cannot be filed, nor can any collection activity be pursued, except for the determination and demand for payment post-petition. If not all of the members of a partnership are involved in legal proceedings, collection effort may be continued against those members not involved.

Demands on sureties or guaranties will not be made while these cases are being litigated.

NOTIFICATION TO PROCEED WITH COLLECTION**754.110**

The Headquarters Special Procedures Section will maintain follow-up contacts with legal representatives of estates and will determine when no dividend or no further dividend can be expected.

Districts will be notified when to proceed with collection. Notification will be made on a Demand for Payment billing when an account has been removed from legal status. This indicator is RM. FM. LGL.

Balances remaining due after probate from deceased persons who operated as individuals will be written off automatically by the Headquarters Special Procedures Section and no demand for payment will be issued.

The Board cannot pursue collection of pre-petition amounts due from Chapter 7 debtors until a discharge has been granted. Districts can make a demand for delinquent returns, as well as issue determinations and make demand for payment on post petition periods. Headquarters Special Procedures Section does not follow "No Asset" Chapter 7 cases. There has, historically, been no uniformity by the courts for scheduling a discharge hearing and granting a discharge. With the exception of the Modesto Court in the Eastern District of California, bankruptcy courts in California are now granting "automatic" discharges without hearing not more than 100 days after the date first set for the first meeting of creditors in a "No Asset" Chapter 7 unless: (1) A creditor files an objection to the discharge, or (2) the court ordered a hearing.

In the absence of a Notice of Objection to Discharge and Hearing or Notice of Hearing, districts may proceed with collection action against debtors, in Chapter 7 "No Asset" cases, 120 days past the date first set for the first meeting of creditors. Petitions filed in the Modesto Bankruptcy Court should continue to be monitored for a discharge notice before taking collection action. Care must be taken to ensure that the object of the collection is not an asset of the estate.

DEBTOR IN POSSESSION**754.120**

Under Chapter 11, a debtor may file with the court a petition for reorganization. In these cases, the assets of the debtor come under the jurisdiction of the court and are not subject to seizure. Trustees may be appointed or the debtor may be allowed to retain possession of his business and assets while under the jurisdiction of the court. In all cases, a Form BT-143, Information — Bankrupt, Assignor, Receiver, or Decedent, will be completed by the district office and forwarded to Headquarters Special Procedures Section.

If security is posted and the taxpayer continues to operate as a debtor in possession, the amount posted will be retained as security for the account and a claim will be filed for the full amount of the liability. If there is no liability, no audit to be done and all returns have been filed and paid, the security must be returned to the trustee or debtor in possession.

The debtor in possession, or trustee who continues with the operation of the business, is required to comply with the requirements of the law to file and pay tax returns as they come due. Effective October 22, 1994, governmental units can make demand for late returns, make assessments, issue determinations, and make demand for payment, all post petition. Any liability which accrues subsequent to the date of the petition represents an expense of administration and as such is entitled to priority over all other claims. Should the debtor later move into a Chapter 7, liquidation proceeding, this liability would provide the basis for an expense of administration claim which the Headquarters Special Procedures Section would file.

BANKRUPTCY REFORM ACT OF 1994**754.125**

The Bankruptcy Reform Act of 1994 was signed into law by President Clinton on October 22, 1994.

As a result of the act, there are basically four amendments to the Bankruptcy Code which will have significant impact on how the Board proceeds with bankrupt accounts. The automatic stay exception has been broadened to permit taxing agencies to take the following post petition actions:

- A) audit to determine a tax liability;
- B) issue to the debtor a notice of tax deficiency;
- C) demand delinquent tax returns;
- D) make an assessment for any tax and issuance of a notice and demand for payment of such an assessment

Liens can not be filed nor can any collection activity be pursued, except for the determination and demand **for** payment.

The other major change is that government units are allowed 180 days to file proofs of claim and, in Chapter 7 cases, a late claim is valid as long as it is filed before the trustee makes any distribution. This is a privilege not to be abused. Caution: not all courts are honoring the 180 day period. Check with Special Procedures for the bar date being used at specific courts. The current follow-up procedures will be maintained.

PENALTY AND INTEREST, ASSIGNMENT AND PROBATE CASES**754.130**

Penalty and interest charges are a part of assignment and probate claims and increase the amount required to be paid by their accruals. These claims cannot be considered paid in full until the total amount of these charges which accrued through the date of payment have been received. If for any reason these charges or any portion thereof are not paid from the estate, they remain the personal liability of the taxpayer who has made an assignment or the personal liability of the partners of any deceased taxpayer whose estate has been in probate.

PENALTY AND INTEREST, BANKRUPTCY CASES**754.140**

The Headquarters Special Procedures Section, at the time of completing a bankruptcy claim, will make the decision as to what penalty and/or interest charges will be included in the claim.

In Chapter 7 cases, after a discharge has been granted or denied, all penalty and interest charges due on an account are subject to full collection effort at the same time and in the same manner as any tax owed by the debtor. Liens, levies, withholds and warrants are used as necessary to collect these accounts and all amounts of penalty and interest still legally owing will be included and shown in these documents.

In Chapter 11 and 13 cases, the districts will make no collection effort regarding unpaid items without first consulting the Headquarters Special Procedures Section. The Headquarters Special Procedures Section will ascertain the rights of collection permitted under the chapter proceedings and will advise of the action to be taken.

TAXES DISCHARGED IN BANKRUPTCY**754.150**

The law provides all taxes where the due date of the return, including extensions, occurred more than three years before bankruptcy, are discharged by bankruptcy proceedings except those taxes which are exempt from discharge (see Bankruptcy Code Sections 507, Priorities, and 523, Exceptions to Discharge).

In brief, taxes “exempt from discharge” are:

1. Taxes for a period ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, within three years before the date of the filing of the petition.
2. Taxes assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition.
3. Taxes not assessed before, but still assessable by law or agreement, subsequent to the petition date (these taxes must be for other than failure to file a return; late filing of a return within two years of the petition date; and filing a fraudulent return.)
4. Taxes required to be collected or withheld and for which the debtor is liable.
5. Excise taxes on transactions occurring before the date of the filing of the petition and for which a return is due, including extensions, within three years prior to the petition date.
6. Taxes with respect to which:
 - a. A return not filed.
 - b. A return was filed after the date the return was last due and after two years before the date of the petition.
 - c. The debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.

If the Board has not filed a lien prior to bankruptcy, and the due date of a return was more than three years prior to bankruptcy, and the taxes do not qualify under any of the categories exempting them from discharge, any taxes plus penalty and interest will be discharged in the bankruptcy and the debtor will no longer be held liable for payment.

If the Board has perfected a lien for such taxes as previously mentioned, the Board may then proceed only against any assets held by the taxpayer prior to bankruptcy and subsequently abandoned by the bankruptcy court. In such cases, the district must contact the bankruptcy court to determine if any assets were abandoned prior to submitting a Form BT-479, Request for Discharge from Accountability.

APPLICATION OF TAX ON SALES ORDERED BY FEDERAL COURTS**754.155**

In 1951, in California State Board of Equalization v. Goggin 191 F.2d 726, the Ninth Circuit Court of Appeals held California sales tax did not apply to liquidation sales of personal property made by a bankruptcy trustee pursuant to court order. In the California State Board of Equalization v. Sierra Summit Inc. case, the Supreme Court overruled the 1951 Goggin decision.

The Sierra Summit Inc. decision states the trustee in a bankruptcy case is not acting as a representative of the Federal government, but is instead a representative of the debtor. The court decision goes on to say a liquidation sale by the trustee is a taxable sale for sales and use tax purposes. All taxable bankruptcy liquidation sales, by trustees or their representatives, occurring on or after June 13, 1989, will be subject to the Sierra Summit Inc. decision.

COLLECTIONS

APPLICATION OF TAX ON SALES ORDERED BY FEDERAL COURTS

(CONT. 1) 754.155

The Board will follow the rule of three or more sales in any twelve-month period, in each bankrupt estate, in deciding if a particular liquidation sale is taxable. If, in any single estate sale, the trustee sells the assets in less than three transactions, the sales are not taxable. The trustee could have many liquidation sales within any given twelve-month period, however the rule of three will apply for each individual estate.

If the trustee in a Chapter 11 proceeding sells some of the assets of the business, in addition to making normal retail sales, the asset sales are taxable. If, however, the Chapter 11 case converts to a Chapter 7 case, a new estate is created and the retail sales made by the trustee in the Chapter 11 proceeding do not apply when determining taxable sales in the Chapter 7 case.

The Board will also follow the rule of three or more sales in any twelve-month period, in each bankrupt estate, when determining if sales by auctioneers/liquidators, acting as representatives of the trustee in liquidating assets of the estate, are taxable sales.

If an auctioneer/liquidator is selling the assets of several estates at a single auction, the rule of three or more sales must be applied individually to the sale of assets of each estate. Therefore, if the assets of one of the estates is sold in three or more sales and the assets of the other estates are sold in less than three sales, only the estate assets sold in three or more sales are taxable.

Sales of vehicles, vessels, or aircraft are not counted when determining if there have been three or more sales in a given estate. However, sales of vehicles, vessels, or aircraft, made by the trustee, auctioneer, or liquidator, are subject to the use tax whether or not three or more sales have been made in a single estate.

Headquarters Special Procedures Section will extend their review of bankruptcy legal notices to identify liquidation sales by trustees or their representatives. Notices of Chapter 7 bankruptcies, and other chapter bankruptcies involving liquidation sales, will be sent to district offices for their action. The follow-up for each of these cases will be the sole responsibility of the district of control.

The field offices will extend their review of bankruptcy legal notices, bulletins and newspapers to identify liquidation sales by trustees or their representatives. Arbitrary account numbers will be issued by the field office if the estate does not already hold a seller's permit (Chapter 11 trustee, etc.), or if the trustee will not have an auctioneer/liquidator sell the assets. Arbitrary accounts will be issued for each estate where there will be taxable liquidation sales by a trustee who does not hold a valid seller's permit for the estate. Arbitrary accounts are being used because they will not create delinquencies leading to the revocation of the trustee's account.

At the time of registration, the field office will provide the trustee with a utility tax return and information pertaining to the taxability of the liquidation sale and the completion of the return. At the time of registration, Form BT-561, Business Tax Registration Arbitrary Accounts, will be prepared by the field office and forwarded to the Headquarters Registration Unit for review and processing.

COMPLIANCE POLICY AND PROCEDURES MANUAL

APPLICATION OF TAX ON SALES ORDERED BY FEDERAL COURTS

(CONT. 2) 754.155

The following boxes must be completed:

- a. Transactions Code — check the proper box
- b. Account Number
- c. Area Code — 12 digits
- d. Owner/DBA — Put the name of the trustee in the owner box and the Trustee (debtor's name) in the DBA box
- e. Mailing Address — City, State and Zip Code
- f. Reason for Issuing — Enter "Bkcy. Liquidation"
- g. Cross Reference Account Number — Enter debtor account number

The field office is responsible for the control of these accounts to ensure the tax return is filed by the trustee when taxable liquidation sales occur.

When a trustee uses an auctioneer/liquidator to sell the assets of the estate in a Chapter 7 liquidation bankruptcy, do not issue an arbitrary permit to the trustee. The taxes are to be reported and paid by the auctioneer/liquidator. For control and possible future audit purposes, a copy of the notice of sale should be placed in the file of the debtor and the file of the auctioneer/liquidator cross-referencing the two accounts.

The effective date of payment on all remittances received from the bankruptcy court/trustee on taxable liquidation sales will be the date the court approves the payment. Administratively, this is the best way for these payments to be handled. All additional interest, which has accrued from the time payment is approved by the court to the time the Board actually receives the money, will then be backed out.

There will be no changes to the permit procedures as they pertain to Chapter 11 bankruptcies. If the case is a debtor-in-possession, the debtor's account continues. If a trustee is appointed by the court, the debtor's account is closed-out and the trustee is issued a permit to operate the business. If the case converts to a Chapter 7, and the trustee does not have a permit for the estate, follow the steps identified above and issue the arbitrary account if appropriate.

FILING OF EMERGENCY BANKRUPTCY CLAIMS BY THE DISTRICT OFFICES 754.160

| The Headquarters Special Procedures Section normally prepares and files all claims in bankruptcy. Occasionally, however, a district office must prepare and file its own claim in a bankruptcy proceeding in order for the claim to be timely.

A small supply of bankruptcy claim forms will be maintained by each district office which is within reasonable proximity to a bankruptcy court. (see Subsection **754.170**).

| When filing a timely claim from the Headquarters Special Procedures Section is impossible, the district office will be requested by telephone to complete an "interim" claim to be hand-delivered to the court.

| A copy of the bankruptcy claim will be immediately forwarded to the Headquarters Special Procedures Section.

| When the situation arises where an emergency bankruptcy claim needs to be filed for a district not located near the bankruptcy court, Special Procedures will request the district office located closest to the court handling the proceedings to prepare and file the claim. In these instances, a copy of the claim will be sent to the district which maintains the account.

COLLECTIONS

FILING OF EMERGENCY BANKRUPTCY CLAIMS BY THE DISTRICT OFFICES

(CONT.) 754.160

Occasionally, Headquarters Special Procedures Section will not be able to file a timely claim. In these instances the district office closest to the court involved will be requested to complete a bankruptcy claim and hand-deliver the claim to the court. The Headquarters Special Procedures Section will provide all the information to be inserted in the claim.

The following district offices will receive claim forms:

FRESNO	NORWALK	OAKLAND
RIVERSIDE	OUT-OF-STATE	SACRAMENTO
SAN DIEGO	SAN FRANCISCO	SAN JOSE
SANTA ANA	SANTA ROSA	

BANKRUPTCY NOTICES CENTRALIZATION

754.170

The California Bankruptcy Courts have been contacted and have agreed to send the bankruptcy notices directly to the Board. The notices are directed to the Headquarters Account Analysis and Control Section where the alpha search of bankruptcy notices has been centralized.

The Out-of-State District will send all bankruptcy notices received from out-of-state courts to the Headquarters Account Analysis and Control Section.

After the Account Analysis and Control Section obtains an account number, the original bankruptcy notice will be sent directly to the district of control.

All secondary notices will be returned to the Headquarters Special Procedures Section for their review. The Headquarters Special Procedures Section will then forward these notices to the districts.

The district offices will follow through with their normal investigation and bankruptcy procedures as the only step being taken in headquarters is a review for account numbers.

IMPRINT OF LEGAL STATUS ON EACH ACCOUNTS RECEIVABLE LIABILITY ITEM

754.180

A code is imprinted to identify each liability where the entire period is prior to the petition date regardless of the type of form of billing, as well as whether the liability is final or nonfinal. The codes are in addition to the identifier printed on the district office copy of the billing. Any period of liability which is subsequent to the date of the petition will carry no identification code. This situation occurs even when only a portion of the liability period is subsequent to the petition date.

The codes are as follows:

<u>Status Indicator</u>	<u>Status</u>
B07	Bankruptcy — Chapter 7
B11	Bankruptcy — Chapter 11
B13	Bankruptcy — Chapter 13
LM	Legal Miscellaneous

The code will appear immediately to the right of the dates for the period of liability. Once a status is entered on the record, it will also appear on any later issued billing for any additional pre-petition periods.

When there is a change of status, i.e. from Chapter 11 to Chapter 7, the Chapter 7 indicator code will be added to the Chapter 11 code.

All bankruptcy status indicators will be removed when the account is removed from legal (bankrupt) status.

BANKRUPTCY PROCEEDINGS — VALID SERVICE UPON THE BOARD**754.190**

The Rules of Bankruptcy Procedure (RBP) and the Federal Civil Rules of Procedure (FCRP) are very specific in reference to what constitutes valid service. Service need not be accepted unless it complies with these rules.

There are numerous types of proceedings and documents in bankruptcy, and there are special rules for many of them. For Board purposes, the principal rules are as follows:

1. Summons and Complaint: If the Board has not filed a claim in the case, service must be made upon the Executive Officer or Chairman of the Board, either by personal service or by mail. RBP 704(c). This is the same rule as for summons and complaint in state actions. See BEAM 7701. FCRP(4) provides that personal service may be made on the chief executive officer of the state agency, or service as prescribed by state law.
2. Notice to Creditors: This service is by mail, to the address shown on the Board claim. RBP 203.
3. Adversary Proceedings: Service is the same as for summons and complaint. FCRP Rule 5. However, if the Board has filed a claim or if the Attorney General has already appeared in the action, service by mail upon the Attorney General or upon a Board office is acceptable as a practical matter.
4. All Cases in Which The Board Has Filed a Claim: Service by mail is accepted whether mailed to Headquarters, to a district office, or to the Attorney General. This is for practical reasons; otherwise, time would be wasted in setting aside actions taken against the Board by default.

When in doubt, contact the Headquarters Special Procedures Section for clarification. If a waiver of invalid service will be advantageous to the Board or to the Attorney General, this fact should be noted.

APPLICATION OF PAYMENTS RECEIVED IN RESPONSE TO CLAIMS**754.200**

Except as authorized by the Supervisor of Special Procedures, payments received in response to our claims (assignment for benefit of creditors, bankruptcy, and probate) will be applied to the amount of the claim in the order of (1) to tax, (2) to interest, and (3) to penalty.

Proceeds from the sale of a bankrupt taxpayer's liquor license will be applied in the order of (1) to the tax liability, (2) to interest on post-petition taxes, (3) to penalties on post-petition taxes, (4) to pre-petition interest on pre-petition taxes, and (5) to pre-petition penalties, however, the bankruptcy Court may require that liquor license funds in this category be paid to creditors with a higher priority.

COLLECTIONS

POST-CONFIRMATION DATE ACTIONS ON CHAPTER 11 BANKRUPT ACCOUNTS 754.220

Bankruptcy withholds are placed, at the account level via the on-line delinquency program, on bankrupt accounts. The withhold suspends all citation and revocation action on all periods protected by the bankruptcy. However, the taxpayer is liable for any delinquencies occurring after the confirmation date. The confirmation date is the date the bankruptcy court approves the taxpayer's plan or reorganization of the business. When this plan has been approved, the district should request a permanent withhold be placed on the specific periods protected by the bankruptcy. This will allow subsequent periods to be subject to the delinquency cycle.

Before a permanent withhold can be placed, the bankruptcy withhold must be removed by Headquarters Account Analysis and Control Section. Although districts have the ability to remove a bankruptcy withhold on-line, they should not do so in this case, because of the timing of the citations. If the bankruptcy withhold is removed and the permanent withhold is not established before citations are produced, the account could be cited for all delinquent periods.

District Responsibility

The district will prepare a memo to Headquarters Special Procedures Section (see Exhibit A), requesting the bankruptcy withhold be removed and a permanent withhold(s) be established. The following information must be included in the request memo:

1. Bankruptcy case number.
2. Date the plan of reorganization was confirmed by the bankruptcy court.
3. Date established by the district for follow-up.
4. The period(s) protected by the bankruptcy.

Headquarters Responsibility

The Headquarters Special Procedures Section will review the request memo for the appropriate supporting information. If approved, a supervisor will sign and date a copy of the memo and forward the memo to the Account Analysis and Control Section for processing.

Upon receipt of the approved request memo, the Account Analysis and Control Section will remove the bankruptcy withhold, and place a permanent withhold(s) on the specific period(s) protected by the bankruptcy.

Bankrupt accounts may be cited for failure to post security, failure to pay a balance, or failure to comply, when these actions occur after the confirmation date of the court approved reorganization plan. The district can cite the account through the on-line delinquency system. A district compliance supervisor should be advised before any bankrupt account is cited for revocation.

Any questions concerning bankruptcy confirmation dates should be directed to the Headquarters Special Procedures Section. Any questions concerning the establishing or clearing of withholds should be directed to the Headquarters Account Analysis and Control Section, Delinquency Unit.

COMPLIANCE POLICY AND PROCEDURES MANUAL

POST-CONFIRMATION DATE ACTIONS ON CHAPTER 11 BANKRUPT ACCOUNTS

(CONT. 2) 754.220

EXHIBIT A

State of California

Board of Equalization

M e m o r a n d u m

To: Headquarters Special Procedures Section

Date: July 5, 1991

From: _____ — District Compliance

Subject: Request for Permanent Withhold on Bankrupt Account

Account No _____

Bankruptcy Case No. _____

John Doe has filed a Chapter 11 bankruptcy. A bankruptcy withhold has been placed on the account. The bankruptcy court has approved the taxpayer's plan of reorganization for the business.

Confirmation Date: _____

District Follow-up Date: _____

Please remove the current bankruptcy withhold and establish a permanent withhold(s) on the following period(s):

Headquarters Special Procedures Section Approval

Approved by: _____ Date_____

Headquarters Account Analysis and Control Section

Processed by: _____ Date_____

NOTICES OF STATE TAX LIENS, ABSTRACTS OF JUDGMENT AND LIENS

760.000

GENERAL

760.010

On the day a tax becomes due and payable but remains unpaid, a perfected and enforceable state tax lien is created for the amount due plus penalties, interest and costs, under the following laws:

Sales and Use Tax, Section 6757

Motor Vehicle Fuel License Tax, Section 7872

Use Fuel tax Law, Section 8996

Cigarette and Tobacco Products Tax, Section 30322

Alcoholic Beverage Tax, Section 32363

Emergency Telephone Users Surcharge Law, Section 41124.1

Energy Resources Surcharge Law, Section 40158

Hazardous Substance Tax Law, Section 43413

Solid Waste Disposal Site Cleanup and Maintenance Law, Section 45451

Underground Storage Tank Maintenance Fee Law, Section 50123

The law regarding state tax liens is now in Government Code Section 7150, et seq.. Section 7170 states, "...the lien attaches to all property and rights to property whether real or personal, tangible or intangible, including all after-acquired property and rights to property belonging to such person and located in this state."

The lien is in force for ten years and may be extended by rerecording the lien with any county or rerecording with the Secretary of State within the ten-year period, a Notice of State Tax Lien.

The lien attaches to all property of a tax debtor by operation of law; nothing needs to be done to perfect the lien. However, Section 7170 requires action in order for the lien to be valid against specific interests in the same property, as follows:

As to real property, a Notice of State Tax Lien must be recorded in each county where the taxpayer's real property is located prior to the time that the four classes of persons listed in Section 7170(b) perfect their right, title, or interest in the property, in order for the lien to be valid against the property.

As to personal property, the prior filing of a Notice of State Tax Lien with the Secretary of State defeats the claims of three classes of persons listed in Section 7170 (b), but cannot defeat the claims of numerous other classes of persons listed in the section.

An additional method of recording a lien against real property under the Sales and Use Tax Law and the Alcoholic Beverage Tax Law, is to follow the summary judgment procedure of Sections 6736, et seq., and 32361, et seq., of the Revenue and Taxation Code respectively, and record an abstract of judgment in any county where the person owns or may be expected to own real property. From the time the abstract is filed it has the force, effect, and priority of a judgment lien and is effective for ten years from the time of filing with the county clerk for recordation unless sooner released by the Board. The time limitation for applying for summary judgment is within three years after an amount becomes delinquent.

COMPLIANCE POLICY AND PROCEDURES MANUAL

GENERAL

(CONT.) 760.010

The normal time of three years from delinquency within which to issue a notice to withhold or a warrant is extended for 10 years from the date of recording an abstract of judgment or the recording or filing of a Notice of State Tax Lien, provided the recording or filing occurs within the initial three-year period. The chart in Subsection **760.020** sets forth the time within which these summary procedures may be used.

If any summary procedure is to be used under any of the herein mentioned laws which provide for their use within three years after an amount becomes delinquent or ten years from the date of the last recording or filing and this period has expired, it then becomes necessary to rerecord or refile prior to using this procedure. If, under any of the laws, a period exceeding three years has expired since the amount became due and there has been no recording or filing or if there has been a recording or filing and a period greater than the effective life of the lien has expired since the recording or filing, the use of summary procedures is forever barred by the running of the statute of limitations.

LIMITATION PERIODS FOR SUMMARY PROCEDURES

760.020

REVENUE LAW	PERIOD WITHIN WHICH NOTICE TO WITHHOLD MAY BE USED	PERIOD WITHIN WHICH WARRANT MAY BE USED	EFFECTIVE PERIOD OF LEINS AND ABSTRACTS
Sales and Use Tax	After a determination is final and remains unpaid but not later than three years after the payment became delinquent, or within ten years after the last recording (see subsection 712.030)	While an amount is delinquent but not later than three years after the payment became delinquent, or within ten years after the last recording.	Ten years (Renewable)
Cigarette and Tobacco Products Tax			
Use Fuel Tax			
Alcoholic Beverage			

TYPE OF RECORDATION ALLOWED BY STATUTE

760.030

REVENUE LAW	NOTICE OF STATE TAX LIEN	ABSTRACT OF JUDGEMENT
Sales and Use Tax Law	Allowed	Allowed
Cigarette and Tobacco Products Tax	Allowed	<u>Not</u> Allowed
Use Fuel Tax	Allowed	<u>Not</u> Allowed
Alcoholic Beverage	Allowed	Allowed

COLLECTIONS

RESPONSIBILITY FOR RECORDING AND FILING LIENS

760.040

The notice of state tax lien or abstract of judgment is prepared and forwarded to the appropriate county recorder or to the office of the Secretary of State by the Headquarters Special Procedures Section. A copy of the document is sent to the district office involved, and a copy is mailed to the taxpayer.

EXTENSIONS OF LIENS

760.050

Before the expiration of the period of time for which a lien is effective, the original lien may be extended by recording a new notice or abstract of judgment in any county or by filing an extension notice with the office of the Secretary of State if a statewide personal property lien was previously acquired and is to be extended. The Headquarters Special Procedures Section has the responsibility for filing extensions the same as it has for original filings.

POLICY AND MINIMUM AMOUNTS — NOTICE OF STATE TAX LIEN

760.060

The use of the Notice of State Tax Lien, has proven to be an effective collection aid resulting in the clearance of many accounts which would have been impossible or more difficult to collect otherwise. Because of the beneficial effect of this type of action, Board policy is to record a notice in the appropriate county approximately sixty days after an amount, if sufficient, becomes delinquent on a determination or redetermination or sixty days after issuance of a billing for an amount due on a return filed without payment or for penalty and interest because of late payment of sixty days after a successor's billing is issued.

Normally, a notice will automatically be forwarded for recording and filing as a result of a review of the account made by the Headquarters Special Procedures Section, if the delinquent amounts exceed \$500 on an active account and \$100 on a closed-out account. The recordation will be made in the county in which the business was located and in any other county in which the taxpayer may own real property. If the delinquent amount exceeds \$5,000, the notice will also be filed with the office of the Secretary of State at Sacramento upon receipt of a request for such action by the district office or if the Headquarters Special Procedures Section review of the file indicates such action is appropriate. A notice will be filed with the Secretary of State in all Attorney General referrals for intervenor actions.

A notice will be recorded or filed for amounts less than the above referred to minimums if the district office determines such action is desirable to aid in its collection effort. Any request for this action is to be forwarded to the Headquarters Special Procedures Section.

If the need for an earlier recording or filing arises or if the lien covering real property should be extended to other counties, an appropriate request should be forwarded to the Headquarters Special Procedures Section by the district office. Also, the district should request a new lien if the district discovers the existing lien was filed prior to July 1, 1983 and the property was previously homestead. (See Subsection **760.120**)

If a taxpayer is a multiple-outlet business, SY for example, the Headquarters Special Procedures Section will check the real property locator and record liens in any county in which real property is found. If no real property is found, a lien will be recorded only in the county where the "master" is located. A Personal Property lien will be filed for record if the account fits the criteria outlined in this section.

If no real property is shown on the locator, but a Headquarters file review suggests the entity may have acquired real estate subsequent to the first Monday in March of the year available on the real property locator the district office will be asked to investigate and inform the Headquarters Special Procedures Section if a lien is required in any county other than the master location.

COMPLIANCE POLICY AND PROCEDURES MANUAL

POLICY AND MINIMUM AMOUNTS — NOTICE OF STATE TAX LIEN

(CONT) 760.060

Post-petition liens on pre-petition liabilities will only be filed in cases where the debtor filed in Chapter 7 of the Bankruptcy Code and has been discharged or the case dismissed.

Abstracts are no longer recorded routinely. Their recording is now limited to renewals of previously recorded abstracts prior to their expiration date to extend the lien acquired by the original recording.

The Headquarters Special Procedures Section is responsible for the timely recording of renewals of abstracts.

REQUESTS TO WITHHOLD RECORDING OR FILING

760.070

This Section is obsolete. Refer to CPMG 140.060

PRIORITY OF LIENS

760.080

A lien on real or personal property created by a delinquent liability, or by the recording of a notice of state tax lien or an abstract in a county recorder's office, or a lien on personal property created by the filing of a notice with the office of the Secretary of State has priority over any other encumbrances on the property only as to the time when the liability became due and payable or time of recording or filing in relation to the recordation or filing date of other encumbrances. (Re: Section **760.010**, for rights, titles, and interests not encumbered).

Generally, the rule "first in time is first in right", including federal liens under Government Code Section 7170.5, applies. Some exceptions to this rule are, a purchase money trust deed and a prior negotiated but later recorded deed. A purchase money trust deed generally is first in priority even though recorded subsequent to the Board's lien date or recording of an abstract. A deed delivered prior to the lien date or abstract but which is subsequently recorded, generally has priority since the effective date is considered to be the date the instrument was delivered. In these cases, a thorough investigation should be made to be sure a subterfuge is not being attempted to overcome the effect of the Board's lien.

Also, the language of this Board's lien laws has no defense against purchase money security interests no matter when they are filed.

U.C.C. Section 9107 defines "Purchase Money Security Interest" as:

"A security interest is a "Purchase Money Security Interest" to the extent that it is (a) Taken or retained by the Seller of the collateral to secure all or part of its price; or (b) Taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used."

Government Code Section 7170(c)(4) establishes the priority; to quote, "(4) Any person, other than the taxpayer who, notwithstanding the prior filing (emphasis ours) of the notice of the state tax lien:...(E) is a holder of a purchase money security interest."

Thus, the Board's lien against personal property where the taxpayer gives a secured interest to a creditor loses priority to the extent of the secured interest.

HOMESTEAD EXEMPTIONS**760.100**

Homestead exemptions protect a portion of the homestead from forced sale. If a homestead declaration has been recorded, the protection also extends to voluntary sales. The portion protected is one of the following:

- One hundred twenty five thousand dollars (\$125,000) if the judgment debtor or spouse is 65 years of age or older or; 55 years of age or older with a gross annual income of \$15,000 (single) or \$20,000 (married); or is unable to be employed due to a physical or mental disability
- Seventy five thousand dollars (\$75,000) for the head of a family
- Fifty thousand (\$50,000) for any other person.

(See Sections 704.720, 704.730, 704.950, 704.960 and 704.965 of the Code of Civil Procedure.)

A tax lien only attaches to the homestead in the amount of any surplus over (1) prior liens and encumbrances on the homestead, and (2) the amount of the homestead exemption. As an example, where the property has a sale value of \$85,000 and the amount of the exemption is \$75,000 and there is a prior mortgage of \$10,000, the two items would consume the total proceeds if \$85,000 were realized from the execution sale. In this situation, the property would need to sell for more than \$85,000 before any benefit could be derived from the Board's lien, provided there were no other prior encumbrances.

A person or married couple is limited to a single homestead at one time.

DECLARED HOMESTEAD**760.110**

A dwelling in which an owner or owner's spouse resides may be selected as a declared homestead by recording a homestead declaration. (Section 704.910 et seq., Code of Civil Procedure.) A declared homestead can only be recorded on real property.

If a declared homestead is voluntarily sold, the proceeds are exempt in the amount of the exemption for 6 months after the date of the sale; (Section 704.960, Code of Civil Procedure), if the owner invests the proceeds in a new homestead declaration. In such case, the homestead declaration has the same effect as if it had been recorded at the time the prior homestead declaration was recorded.

On and after July 1, 1983, a state tax lien attaches to a dwelling regardless of the prior recording of a homestead declaration. (Section 7170, Government Code.) Therefore, if a delinquent taxpayer's file indicated the Board's lien was filed prior to July 1, 1983, on previously homesteaded property, you should request a new lien. Additionally, you should be alert to any oversight by title companies in not recognizing the Board's lien. If the Board is not notified of the sale in escrow and the escrow company releases all funds, a course of action may be maintained against escrow and the title company on the policy of title insurance.

HOMESTEAD EXEMPTION (AUTOMATIC)

760.120

Whether or not a homestead declaration is recorded, the Code of Civil Procedure (Sections 704.710 et seq.) provides for a homestead exemption for dwellings in the same amounts as outlined in CPPM Section **760.100**. Unlike the declared homestead, this exemption also applies to mobilehomes and boats in which the debtor resides. Proceeds from involuntary transfers of a dwelling (execution sale, or condemnation for public use, insurance proceeds from damage or destruction of the homestead) are exempt in the amount of the homestead exemption for six months after the debtor receives the proceeds. The proceeds are not exempt if the debtor or debtor's spouse apply the homestead exemption to other property within the six-month period. Proceeds from the voluntary sale of the dwelling are not exempt (Section 704.720 Code of Civil Procedure).

INTERVENOR ACTION

760.130

In cases where a delinquent taxpayer either files a civil action against another person to recover a sum of money or is the defendant in the action and files a cross-complaint, there is a possibility for the Board to intervene and secure a lien on the cause of action and any judgment subsequently recovered by the taxpayer. To accomplish this, the matter must be referred to Special Procedures, with all of the details, so appropriate action can be taken before judgment is entered (see **760.140**). No case should be considered for referral if the liability is less than \$500.

If the Intervenor Action is successful, a lien will be granted on the cause of action which will also attach to the judgment rendered in favor of the plaintiff if the plaintiff prevails in the suit. The lien on the cause of action has priority as of the date that it is filed in the civil action. If the attorney representing the taxpayer has a written fee agreement which provides that the taxpayer grants the attorney a lien on any proceeds of the lawsuit to pay the attorney fees and costs incurred in the lawsuit, the attorney has a lien as of the date the agreement is executed. In most cases, the written fee agreement will create a lien senior to the Board's, entitling the attorney to offset all attorney fees and costs (*Cetenko v. United California Bank* (1982) 30 Cal.3d 528).

INFORMATION NECESSARY

760.140

If a civil action is filed by a delinquent taxpayer to recover money, and the taxpayer owes the Board \$500 or more, Form BT-708, Request for Notice of Lien on Cause of Action, should be completed and forwarded to the Headquarters Special Procedures Section. Referrals should not be forwarded when our tax debtor is the defendant in the case, unless a cross complaint has been filed.

When preparing Form BT-708, Item 1{DAG}(Deputy Attorney General), should be left blank. Items 2 through 10, listed below, must be accurately completed.

- Item 2: Court
- Item 3 Case name (always give complete title of case per court records)
- Item 4 Case number
- Item 5 Taxpayer (complete name or names)
- Item 6,7,& 8 Total unpaid amount and interest information
- Item 9 Parties to serve (include the name and address of the attorneys for all parties. If no attorneys are known, give the name and address of the party to which notice may be given. If substitute attorneys are listed in court records, show their names and addresses.)
- Item 10 Nature of suit and cross complaint

Prompt action in reporting the matter to the Headquarters Special Procedures Section should be taken since the Attorney General must give notice of the state's lien to all parties in the action.

COLLECTION ACTION TO CONTINUE

760.150

The fact a taxpayer who has filed a civil action is making installment payments or has promised to make full payment at some future date should not be reason to refrain from attempting to create a lien on the cause of action. This should be considered as only one of the cumulative remedies to be used while other appropriate efforts are continued.

REPORTS TO THE DISTRICT OFFICE

760.160

After the Attorney General has completed his/her action and notification has been received by the Headquarters Special Procedures Section on the results of the efforts, the information will be passed on to the district office. Regardless of whether the Attorney General was successful, other efforts to collect should be continued.

ACTION WHEN FULL PAYMENT RECEIVED

760.170

If full payment is received in the district office on a case referred to the Attorney General, whether before or after a lien has been granted, a report of the collection will be forwarded promptly to the Headquarters Special Procedures Section so the information can be conveyed to the Attorney General.

DISTRICT OFFICE FOLLOW-UP

760.180

As frequently as deemed necessary, district office personnel should follow-up on these cases to maintain current status. Court records should be checked or the attorneys should be contacted. Any significant changes in the case should be reported to the Headquarters Special Procedures Section.

Keeping abreast of the current status of a case is important since the action of the Attorney General consists only of obtaining the lien and not of maintaining a follow-up or further collection action.

COMPLIANCE POLICY AND PROCEDURES MANUAL

COLLECTIONS

RELEASES, PARTIAL RELEASES AND SUBORDINATION OF LIENS

763.000

GENERAL

763.010

The Board may, at any time, release all or part of any taxpayer's real property from the effect of its lien or liens acquired under any of the revenue laws which it administers. The Board may also subordinate any lien to other liens or encumbrances if it is determined the amount due is sufficiently secured by a lien or other property, or collection will not be jeopardized by the subordination.

Full releases are furnished to taxpayers only after full payment has been made or, if amounts are still due, they may be furnished to escrow agents or title companies along with a statement of payment and conditional release requirements which must be met prior to the use of the release. All full releases are prepared and mailed by the Headquarters Special Procedures Section.

Reference: Section 6740 Sales and Use Tax Law

ROUTINE RELEASES OF LIENS

763.020

When full payment not accompanied by a request for a release is received, the release will be furnished routinely in approximately 90 days from the date of payment. Releases will be mailed directly to the taxpayer and the taxpayer has the responsibility to record the release of lien.

REQUESTS FOR RELEASES OF LIENS

763.030

Requests for releases to be mailed to escrow agents, title companies, or the taxpayer to enable the conveyance of property, will be handled as expeditiously as possible. If the request is received by a district office, it will be forwarded to the Headquarters Special Procedures Section within one day. When requests are received in the Headquarters Special Procedures Section, whether from a district office or direct, every effort is made to mail the release within one day.

If the release mailed to an escrow agent or title company requires payment be made prior to its use, the Headquarters Special Procedures Section will maintain a proper follow-up to ensure payment is received or the unused release is returned. Title companies and escrow agents who record releases without making payment in violation of the Board's written instructions become liable for the amount they fail to pay.

PAYMENTS BY PERSONAL CHECK — RELEASE OF LIEN

763.040

Upon payment of a liability by personal check, no release will be furnished for 60 days from the date of payment, unless the taxpayer can sooner present for examination his/her cancelled check used in making the payment. If the release is to be delivered to the taxpayer at the time payment is made, such payment must be in cash, money order, certified or cashier's check. Company checks of escrow agents or title companies are acceptable.

RELEASE OF LIENS ACQUIRED THROUGH ERRONEOUS RECORDINGS

763.050

The release of liens acquired through erroneous recording of certificates or abstracts is the duty of the Board. An example of a certificate or abstract recorded in error is where the recordation took place after full payment had been made. In these cases, the Headquarters Special Procedures Section will prepare a release clearly showing that the document was recorded in error and the release will be forwarded to the county recorder to be recorded without fee.

SUBORDINATION OF LIENS**763.060**

Subordination of real property liens are usually requested for the purpose of acquiring property on which a trust deed is to be executed which is to become a first lien or for the purpose of placing a new encumbrance on property which already stands in the taxpayer's name.

Subordination should not be issued merely as a convenience to the taxpayer or without proper investigation to determine the merits of the request. In most cases, the position of the state will not be worsened by issuing a subordination since property is to be acquired or presently owned property will be retained.

In cases of refinancing currently owned property, the taxpayer will have money coming to them at the close of escrow. In these cases, a subordination will not be given unless there are extenuating circumstances or unless the taxpayer has agreed to have the surplus funds remitted directly to the Board.

In all cases where a subordination is requested, the district office will make a written recommendation including supporting reasons to the Headquarters Special Procedures Section, accompanied by the taxpayer's written request stating the reason the subordination is desired. Also forwarded will be the following:

- a) The date and amount of the deed of trust to be executed.
- b) The names of the parties executing the deed of trust as those names will appear on the instrument.
- c) The name of the trustee.
- d) The name of the party in whose favor (beneficiary) the deed of trust will be executed.
- e) Copy of the preliminary title report.
- f) The legal description of the property as it will appear on the deed of trust (required only if this description is different than the description contained in the preliminary title report).
- g) Schedule of proposed disbursement of funds by the escrow holder.
- h) Printout of TRW REDI Property (DAMAR) real property search report.
- i) Lender's appraisal report or statement of property value.

Every such request will require a thorough investigation to assemble all of the required facts in order to make a decision. In every case where the taxpayer has the ability to pay, no subordination will be issued.

PARTIAL RELEASES OF LIENS**763.070**

A partial release of lien, when recorded, has the effect of removing a lien from only the particular real property described in the partial release, while allowing the liens effect on other real property in which the taxpayer has an interest to remain undisturbed. Partial releases are given at the discretion of the Board and their issuance is not mandatory. Releases of this type are usually requested in those cases where the taxpayer does not have available funds to pay the amount due, but does own more than one parcel of real estate, and is selling at least one, but not all parcels of property owned.

Partial releases might also be requested when the taxpayer is selling his/her only parcel of real property and the surplus funds are insufficient to pay the entire tax liability. The taxpayer must then agree to have the surplus money from the sale remitted directly to the Board.

COLLECTIONS

PARTIAL RELEASES OF LIENS

(CONT) 763.070

Partial releases are generally not given merely as a convenience to the taxpayer. They are given only when such action will not jeopardize collection of the remainder of the account or where the lien on other property provides adequate security. Since the reason a partial release is given is to permit the taxpayer to convey real property, all amounts, which would normally be paid to the taxpayer and which are above the amounts due prior lien holders plus the costs of the sale, will be paid directly to the Board.

All requests for partial releases shall be transmitted to the Headquarters Special Procedures Section. In order for the Headquarters Special Procedures Section, in conjunction with the legal staff, to consider the request properly, the following is required:

- a) Cover memo including recommendation and reasons in support of recommendation.
- b) Taxpayer's/escrow's written request stating the reason the partial release is desired.
- c) Lender's appraisal report or statement of market value.
- d) Copy of preliminary title report.
- e) Schedule of proposed disbursement of funds by the escrow agent.
- f) Printout of TRW REDI Property (DAMAR) real property search report.

Every request will require a thorough investigation to assemble all of the required facts in order to make a decision. In every case where the taxpayer has the ability to pay in full, no partial release will be issued.

RELEASES OF LIENS WHEN BOARD RECORDS ARE DESTROYED

763.080

It is not unusual for the Board to receive requests for release of liens in cases where records have been destroyed. If, when requests are received, the district office finds its records are destroyed, it can be assumed that the Headquarters Taxpayer Records records are also destroyed. When this situation occurs, district offices should secure either from the escrow agent, title company, or from the office of the county recorder, all of the data necessary for the preparation of the release. This information should then be forwarded to the Headquarters Special Procedures Section as promptly as possible along with the request for the release. The required information is as follows:

- a) Certificate number.
- b) Name of person or persons against whom recorded, including dba, if any.
- c) Amount of certificate.
- d) County in which recorded.
- e) Date, book and page of recording.

In every case where a request for a release is received and records are destroyed, it must definitely be ascertained that the certificate for which a release is requested was recorded by the Board. Failure to do so will result in unnecessary work, as well as delay for the taxpayer, if it is later discovered the certificate was recorded by another agency.

COMPLIANCE POLICY AND PROCEDURES MANUAL

COLLECTIONS

COLLECTION FROM SURETIES

766.000

EFFECTIVE PERIODS AND LIABILITY

766.010

A surety can be held liable for an amount which its principal failed to pay only if the liability results from transactions which occurred during the effective period of the bond. Each bond shows an effective date and remains in force from that date until 30 days after receipt, by the Board, of a notice of termination from the surety. It is the period between these two dates which constitutes the effective period.

The liability of the surety extends to tax, penalty and interest regardless of the location or locations at which the liability was incurred.

NOTIFICATION TO SURETIES

766.020

When a demand for payment is issued against a taxpayer whose security is in the form of a surety bond, notification of the delinquency is generally sent by the Headquarters Special Procedures Section to the surety.

In order to keep sureties informed of the status of the accounts of their principals, they are also notified when the Headquarters Special Procedures Section files claims in bankruptcies, assignments, or probates, and in certain cases, when installment proposals are accepted.

DEMANDS ON SURETIES, DISTRICT RECOMMENDATIONS

766.030

If the liability exceeds \$50 and investigation discloses payment from the taxpayer cannot be expected, there is no corporate officer personal liability, and there are no assets upon which to levy, the district's responsibility is to recommend demand on the surety. The recommendation should be made as soon as it is apparent payment cannot be expected.

DEMANDS ON SURETIES, CORPORATE ACCOUNTS

766.035

Section 2845, Civil Code, states, "A surety may require the creditor, subject to Section 996.440 of the Code of Civil Procedure, to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue, and which would lighten the surety's burden; and if the creditor neglects to do so, the surety is exonerated to the extent to which the surety is thereby prejudiced". The Board must therefore exhaust all collection avenues and investigate all other remedies available prior to making demand upon a surety bond unless the surety has similar remedies. If a bond is indemnified by the corporate officer(s) who would also be the individual(s) billed by the Board, similar remedies exist.

COMPLIANCE POLICY AND PROCEDURES MANUAL

DEMANDS ON SURETIES, CORPORATE ACCOUNTS

(CONT) 766.035

In view of the above, the following procedures will be followed when a surety bond secures liability on a corporate account.

1. If collection cannot be made from the corporation, the corporate officers become the indemnifier of the bond and the liability for the secured bond does not exceed the penal sum of the bond plus \$500 (normal minimum amount of liability required to issue dual determination), a request for demand on the bond is in order.
2. If the liability for the secured period exceeds the penal sum of the bond by more than \$500, corporate officer/employee liability must be explored. If the review for individual liability is negative, a request for demand on the bond is in order. If the review is positive, the individuals should be billed, and demand on the bond deferred, until the potential for collection from the individual(s) has been thoroughly explored.

INTEREST CHARGES ON DEMANDS

766.040

If the amount of liability for which demand is made is less than the penal sum of the bond, the demand will provide for prevailing interest on the tax at the rate established pursuant to the Revenue and Taxation Code. If the liability exceeds the penal sum of the bond, the demand will provide for additional legal interest at the prevailing per annum rate on the full penal sum of the bond.

APPLICATION OF PAYMENTS FROM SURETIES

766.050

Except as authorized by the Supervisor of Special Procedures, any payment received from a surety will be applied to the liability which was incurred during the effective period of the bond in this order: (1) to tax, (2) to interest, and (3) to penalty.

LIMITATION PERIODS FOR DEMANDS

766.070

The legal staff of the Board is of the opinion the limitation period for a surety bond or guaranty is within ten years from the date a tax liability becomes due, or within ten years from the effective date of termination by the surety or guarantor, whichever is earlier. It is the responsibility of the Headquarters Special Procedures Section to take appropriate action prior to the expiration of the limitation period. The Headquarters Special Procedures Section will make demand sufficiently in advance of the expiration of the limitation period to allow for the filing of a suit, if necessary, or obtain a waiver of the limitation period.

If the surety will not furnish a waiver and has not made its payment, the Headquarters Special Procedures Section will refer the matter to the Attorney General for suit if the amount of liability warrants. To prevent the running of the statute of limitations, suit must be filed against the surety or guarantor prior to the expiration of the limitation period.

DEMANDS INVOLVING MORE THAN ONE SURETY

766.080

If there is more than one surety on an account, demands will be made on each surety for the amount of liability incurred during the effective periods to the extent of the penal sum of each bond. If there is an overlap of the effective periods, the liability due for the overlap period will be prorated between the sureties. Each surety, in cases of overlap, however, is liable for the full amount incurred during the overlap period.

COLLECTION FROM GUARANTORS

766.090

The provisions applying to collection from guarantors in relation to effective periods, limitation of liability, notification, demands, interest charges, application of payments due, and limitation periods for demands are the same as those applying to sureties.

OFFERS IN COMPROMISE**772.000****GENERAL****772.010**

The Board of Equalization has no authority to approve offers by taxpayers to settle their tax liability for less than the amount owing. The board may, however, refer such offers to the Attorney General with a recommendation for acceptance. The board will not entertain offers on active accounts. Only those that are clearly in the board's best interest will be referred to the Attorney General. All offers must be submitted through the board. The Attorney General will not consider offers received directly from the taxpayer.

PROCESSING OF OFFERS**772.020**

All offers in compromise must be submitted to the board's district office responsible for the account. The offer need not be in any particular form but must be in writing and must clearly state the offer and how it would be paid. Generally, the taxpayer is required to submit a statement of present financial condition and any other documentation that the board may require to evaluate the merit of the offer. The district office is not required to forward an offer to board headquarters and may reject an offer based on their review. Offers forwarded to headquarters must be reviewed and approved by the District Office Administrator.

Offers forwarded to headquarters will be reviewed by the Headquarters Special Procedures Section. The Special Procedures Section will evaluate the offer using established guidelines. The evaluation, together with a recommendation will be sent to the Deputy Director, Sales and Use Tax. Upon approval, the Deputy Director will forward the evaluation to the board's Legal Section for transmittal to the Attorney General.

If an offer is acceptable to the state, there will be a mandatory court filing fee which must be paid in addition to the amount of the compromise. The amount of the fees vary from one county to another. The exact costs may be obtained from the court.

COMPLIANCE POLICY AND PROCEDURES MANUAL

PREDECESSOR'S LIABILITY FOR SUCCESSORS' TAX**775.000****GENERAL****775.010**

It is unlawful for a transferee (successor) of a business to operate the business without a permit issued in his/her name. Upon discontinuing or transferring a business, a permit holder shall promptly notify the Board and deliver his/her permit to the Board for cancellation. To be acceptable, the notice of transfer must be received in one of the following ways:"

- a) Oral or written statement to a Board office or authorized representative, accompanied by delivery of the permit, or followed by delivery of the permit upon actual cessation of the business. The permit need not be delivered to the Board, if lost, destroyed, or is unavailable for some other acceptable reason.
- b) Receipt of the transferee's (successor's) application for seller's permit.

Notice to another state agency of a transfer does not in itself constitute notice to the Board.

Unless a transferor of a business notifies the Board of the transfer, or delivers his/her permit to the Board for cancellation, he/she is liable for taxes, interest and penalties (excluding fraud penalties) incurred by his/her transferee who with the transferor's actual or constructive knowledge uses the transferor's permit in any way, e.g., by displaying transferor's permit in transferee's place of business, issuing resale certificates showing the number of the transferor's permit thereon, or filing returns in the name of the transferor and under the latter's permit number. The liability shall continue and shall include all liability incurred up to the time the Board receives notice of the transfer.

When it is evident that the predecessor did not notify the Board of the business transfer, a request for the issuance of a Notice of Determination in the name of the predecessor should be made to the Headquarters Special Procedures Section supported by an explanation of the circumstances involved. The Notice of Determination, when issued, is a formal notice informing the predecessor of his/her liability, and collection action can be taken upon its finality.

If the predecessor claims that the Board has received constructive notice of transfer to the successor, the information in support of such claimed notice should be referred to the Headquarters Special Procedures Section.

Initial collection efforts should be made against the successor. However, if it appears that delaying action against the predecessor will jeopardize the collection of the liability, full collection efforts should be instituted against the predecessor.

**DUAL DETERMINATIONS AGAINST
PREDECESSOR FOR SUCCESSOR'S LIABILITY**

775.015

We have encountered various collection problems due to the lapse of time between the determination of liability against the successor and the dualing of the predecessor. For example, since there has been no record of the liability established on the predecessor's account at the time of close-out, the predecessor's security deposit, if any, will most likely have been refunded prior to the issuance of the dual determination, thus precluding the application of security to the liability. In addition, collection activities may be further impeded since there is the possibility that the predecessor's file, along with possible collection leads, may have been destroyed prior to the issuance of the dual determination. Additionally, the predecessor is not immediately informed of a tax liability which he/she shares equally with the successor.

COMPLIANCE POLICY AND PROCEDURES MANUAL

DUAL DETERMINATIONS AGAINST PREDECESSOR FOR SUCCESSOR'S LIABILITY

(CONT.) 775.015

When a predecessor's liability is involved, three determinations may result. First, a separate determination should be issued against the predecessor for any period that he/she actually operated the business. A second determination should be issued against the successor for the period during which he/she has operated the business. Lastly, a dual determination should be issued against the predecessor concurrent with the issuance of a determination against the successor. The dual determination should be issued to the date on which the Board first had knowledge of the change in ownership. Periods beyond this date may not be included as they would not be legally assessable against the predecessor.

This procedure will fully implement Regulation 1699(e) which asserts: "...Unless the permit holder who transfers the business notifies the Board of the transfer, or delivers the permit to the Board for cancellation, he/she will be liable for taxes, interest and penalties (excluding fraud penalties) incurred by his/her transferee who with the permit holder's actual or constructive knowledge uses the permit in any way;...."

While three determinations may result, only two audit reports need to be prepared. One audit report should be prepared for the period the predecessor actually operated the business and the other for the period the successor operated the business. The audit report for the successor should include a request for a dual determination against the predecessor up to the date that the Board first had knowledge that the business ownership had changed.

The front of Form BT-414-A or Form BT-414-B prepared for the period involving the dual determination must include the following notation in the lower portion of the analysis of measure section: "Attention Audit Review — Dual Determination Requested." In addition, the auditor will comment on the back of Form BT-414-A or Form BT-414-B giving the reason for the dual determination: the name, address and permit number of the predecessor against whom the determination is to be made; and the period for which the dual determination is requested.

Example: DUAL DETERMINATION — Predecessor's liability for the period April 1, 1974, to June 30, 1976. Predecessor is John Jones and Harold Smith; 3216 Langdon Blvd., Van Nuys, CA 91405. Permit number is SR AC 13-362185.

A copy of Form BT-414-A1 should be transmitted to headquarters with the audit reports. In addition, the audit reports should be transmitted to headquarters together.

Current practices applying to dual determinations will be adhered to. The only exception would arise if a 25% fraud penalty is applied to the successor's tax liability. Regulation 1699(e) specifically states that the predecessor is not liable for any fraud penalties. In this instance, the fraud penalty will be replaced by a 10% negligence penalty on the dual determination issued against the predecessor.

COLLECTIONS

FIELD COLLECTIONS — RECEIPTS

778.000

RECEIPTS, FORM GA-602

778.010

An official receipt, Form GA-602, will be issued for all payments in any form collected by any representative in the field.

Receipts are prepared in sets of three with the original (white) delivered to the taxpayer. The yellow and white copies are retained by the Board. Ball-point pens should be used to write the receipts with care taken that all copies are legible.

Each representative assigned a receipt book is personally responsible for the book and all the receipts therein until they are used or the book and the remaining receipts are surrendered. Each receipt must be used in numerical sequence. For details on the procedures to be followed when a receipt book is lost or stolen, see Subsection **778.050**.

ENDORSEMENT OF CHECKS

778.020

Immediately on acceptance of checks, money orders, cashier's checks, etc., in the field by any Board representative, the instrument will be restrictively endorsed by writing on the back "For deposit only to State Board of Equalization".

RECEIPT PREPARATION

778.030

Refer to Section 810.000 et.seq.

OVERNIGHT RETENTION OF FUNDS — FIELD REPRESENTATIVE

778.040

Cash collection in excess of \$500 should not be retained by field representatives overnight. The action taken should be in accordance with the availability of the following sources for disposition or protection of funds:

- a) Turn the money in to the office.
- b) Purchase a cashier's check payable to the Board. (In many instances, there will be no charge when purchased from a branch of the Bank of America.)
- c) Purchase a money order payable to the Board. (The cost of the cashier's check or money order will not be deducted from either the cashier's check or money order but will be paid from the representative's own funds. The tax representative will then claim reimbursement on his/her travel expense claim.)
- d) Deposit the cash in a night depository providing the deposit bag and the deposit are sealed in the presence of two Board employees who will sign the agency copy of the deposit slip indicating that they have verified the coin and currency (cash) portion of the deposit.

In any instance not covered by items a,b,c,d, the field representative will take whatever action necessary to protect the cash collected. Under all circumstances, the representative will be expected to exercise good judgment and use every precaution to prevent loss.

LOST OR STOLEN RECEIPT BOOKS

778.050

Lost or stolen receipt books should be reported immediately by the representative to his/her supervisor. The district administrator should then direct a memorandum to the Headquarters Cashier advising of the loss or theft, with copies for the Chief of Field Operations and Deputy Director, Administration, and the Chief, Internal Security and Audit Division. The memo should name the person to whom the book was issued, the date lost, the inclusive numbers of the unused receipts, a description of conditions leading to the missing book and a recommendation by the administrator on how future occurrences of this type could be avoided.

The Headquarters Cashier will then make this information known to the Board staff and ask them to be alert for receipts bearing the missing numbers.

COLLECTIONS

ACCOUNTS RECEIVABLE, SPECIAL MAILING

781.000

GENERAL

781.010

Semiannually, the Board makes a special Statement of Account mailing to selected sales and use tax accounts having final accounts receivable balances. The mailings include closed-out and Consumer Use Tax accounts.

DISTRICT RESPONSIBILITY AND PROCEDURE

781.020

The majority of the billings are delivered as addressed; however, a portion is returned to headquarters by the postal authorities. The returned billings will be sent to the respective districts for a better address.

If a better address is available, the old address should be lined out, the new address added, and the registration record corrected.

If a new address is not available or practical (skips, recently paid in full, etc.), the reason should be noted on the billing.

The above two groups should be kept separate and forwarded to Headquarters Special Procedures Section in batches mailed no more frequently than weekly. All billings should be returned within 30 days of receipt in the district.

Headquarters Special Procedures Section should be notified whenever the district becomes aware of an accounts receivable address change. Continuous attention to these accounts will keep the undeliverable mail to a minimum.

COMPLIANCE POLICY AND PROCEDURES MANUAL

COLLECTIONS

MISCELLANEOUS

799.000

REWARD PROGRAM

799.005

Under the Tax Penalty Amnesty Legislation of 1984 (AB 3230, Chapter 1490, effective 9/14/84), the Board was granted authority to establish a reward program for information leading to the collection of unreported or underreported sales and use taxes. In 1984, the Board considered and deferred the matter of establishing a reward program. In 1987, the Board again considered this matter and the staff was directed to develop a package which would enable them to implement the program. The resultant package consisted of a proposed reward regulation, an application for the reward, and procedures for implementing the program. After reviewing this package, the Board again decided to defer establishing this program because of the lack of sufficient funds. The Board again discussed this issue in 1991 with no action taken to implement the program.

Assembly Bill 3665 (Chapter 671, Statutes of 1992) amended Section 7060 of the Revenue and Taxation Code, providing, in part, that rewards paid pursuant to this section shall be paid from amounts appropriated by the Legislature for that purpose. No funds have been appropriated to date.

If an individual indicates he or she has information which would enable the Board to recover sales tax revenues, they should be advised that while the statutes do provide for a reward program, it has not been funded by the Legislature. However, attempts to obtain the information should be made by appealing to that person's duty as a good citizen and equal treatment/payment of taxes for all.

ADVICE OF PAYMENT, FORM BT-424

799.010

Advice of Payment, Form BT-424, is used to transmit any business tax remittance to be applied as a payment to an account. The form is used for any payment which applies to accounts receivable whenever such payment is not accompanied by an appropriate remittance advice, i.e., copy of form letter, billing, etc. Form BT-424 is not used to transmit a reinstatement fee or cash deposit or refund of advance fees to sheriffs or marshals.

See Section 842.070 for instructions on preparing a BT-424.

VIDEO DISPLAY PRINTOUT AS PAYMENT TRANSMITTAL DOCUMENT

799.015

The Business Taxes Consolidated Information System (BTCIS) provides a format on !AR1 which may be used as a printout to provide a payment document when billing Forms BT-1210 or BT-1212 are not available. In addition, BTCIS provides a format on !AR7 which contains information similar to the information of Form BT-424, Advice of Payment. This format is designed to be used in place of the BT-424 for payments which apply to accounts receivable when no other payment document is available or appropriate (see Subsection **799.010**). It should not be used in-lieu of a BT-1043 for payments received and earmarked as additional tax on a return previously filed (see Subsection 540.180).

If the AR1 format is called up, and there is no liability, the AR7 format will display automatically. If the accounts receivable file does not match the registration file, the following message will be displayed: Please re-enter correct account number or use Form BT-424.

The payment documents must be 8 1/2" by 11" and have the side paper carrier detached. The tax program code, office code, account number, name and address must be verified for correctness and must be on the printout with the first print line two inches from the top of the page. Documents not meeting these requirements will be returned by the Cashier's Unit with the notation "Too short", "Too low", or "Too high".

COMPLIANCE POLICY AND PROCEDURES MANUAL

VIDEO DISPLAY PRINTOUT AS PAYMENT TRANSMITTAL DOCUMENT

(CONT) 799.015

Do not show application of payment by period, unless it is important to apply the payment to a specific period; e.g., period covered by levy and payment received as the result of the levy; period not covered by bond; protection of lien priority; operation by a fiduciary; interpleader; post-petition period; interest and penalty not claimable in bankruptcy; portion of liability discharged; or payment is to be applied as designated by the tax debtor or co-debtor. "Free money", no specific application, is preferable. The computer is programmed to apply the payment in accordance with Subsection **799.030**.

| For additional information see Section 842.040.

BILLINGS USED AS TRANSMITTAL FORMS

799.020

Whenever possible, a copy of the billing will be used as a payment (transmittal) document, and will be completed as follows: (See Subsection **799.040**)

- a) The total amount of the payment must be shown to the right of the word "AMOUNT" and above the word "TOTAL".
- b) The period(s) and sub-total(s) of the liability must be circled with a line joining same. If the billing has multiple periods and the payment equals a portion of the total liability, only those periods and sub-totals will be circled.
- c) If the payment clears the liability in full, or if it makes no difference to which period the payment applies, and there are no non-final liabilities, then the periods and amounts should not be entered in the billing section.

If the payment is from security, print in large bold letters across the billing "PAID FROM SECURITY".

| If the payment involves a predecessor/successor relationship, see Section **799.045**.

Use tax billings do not show a liability period, therefore, only the amount of payment will be shown.

| For further information see Section 842.020

STANDARD RULE FOR APPLICATION OF PAYMENT

799.030

| The standard rule for application of payment is in the following sequence (reference Civil Code §1479):

- a) As directed by the taxpayer.
- b) As directed by the district.
- c) Or, if the district or taxpayer does not specify a liability period, in the following:
 1. To tax not yet delinquent.
 2. To determinations not yet final.
 3. To tax.
 4. To interest.
 5. To penalty.

- | d) Headquarters Special Procedures Section may, in accordance with Board policy, change any of the above.

Security payments will be applied first to establish liabilities designated as "pending security". Any excess will be applied in accordance with the standard rule for application of payments.

COLLECTIONS

EXAMPLE OF BILLING USED AS TRANSMITTAL FORM

799.040

BT-1212-3 FRONT
REV. 4 (1-92)STATE BOARD OF EQUALIZATION
DEPARTMENT OF BUSINESS TAXES
P.O. BOX 942879 SACRAMENTO, CALIFORNIA 94279-0001

RE	PM
EFFECTIVE DATE OF PAYMENT	
MO	2 DAY 2 YEAR 1974

IN REPLY REFER TO:

72	1950	12/69	MONTHLY
XXXXXXXXXXXXXXXXXXXX			
XXXXXXXXXXXXXXXXXXXX			
XXXX XXXX XXXX XXXX			
XXXXXXXXXXXXXXXXXXXX			

DATE:	ACCOUNT NUMBER		
FEBRUARY 11, 1974	SR	KHD	29-668805

DELINQUENCY			SECURITY		
REASON	C	R	TYPE	AMOUNT	NO.
AUG 1973		X	CASH-DEP	310.000	1
TOTAL				310.000	1

** DEMAND **		AMOUNT \$ 100.00			
		TAX	INTEREST	PENALTY	TOTAL
RETURN — RET'D CK 10/01/73 — 10/31/73	12/28/73	182.15	1.8C	18.22	202.19
INTEREST TO 02/28/74			.06		.06
PAYMENT 01/21/74		- 70.000			- 70.000
PAYMENT 01/25/74		- 100.00			- 100.00
SUB-TOTAL		12.15	1.88	18.22	32.25
RETURN — RET'D CK 07/01/73 — 07/31/73	01/14/74	.01	.54	10.92	11.47
L-1667 C-0417 SUB-TOTAL		.01	.54	10.92	11.47
RETURN — NO PAYMNT 11/01/73-11/30/73	02/01/74	80.26	.80	8.03	89.09
SUB-TOTAL		80.26	.80	8.03	56.28 89.09
RETURN — NO PAYMNT 08/01/73-08/31/73	02/11/74	112.45	2.80	11.25	126.50
L-1667 C-0417 SUB-TOTAL		112.45	2.80	11.25	126.50
TOTAL		204.87	6.02	48.42	259.31
***** PAY THIS AMOUNT					259.31
MONTHLY INTEREST OF		1.02 WILL ACCRUE IF NOT PAID BEFORE 03/01/74			

SUBPOENAS DUCES TECUM**799.050**

1. Authority and Use. The State Board of Equalization is authorized by Section 15613 of the Government Code to issue a subpoena for the attendance of witnesses or the production of books, records, accounts and papers. A subpoena requiring a person to bring books, records, accounts and papers with him/her is called "a subpoena duces tecum." When in the course of a field audit or investigation of a taxpayer's business, the Board's representative is denied access to business records which are necessary in order to carry out the functions of the Board, the subpoena power may be invoked.
2. Information Needed. A request to the legal staff to draft a subpoena duces tecum must be authorized by the district administrator, approved by the Chief of Field Operations, and should include the following information:
 - a) The purpose for which the records are needed.
 - b) The date, time of day and place where the person will be ordered to appear.
 - c) The name and position title of the Board representative before whom the person will be ordered to appear.
 - d) A list of the records sought and the period of time to which the records relate.
 - e) The name, nature and location of the business to which the records relate and the name, address and relationship to the business of the person who has custody and control of the records.
 - f) A statement indicating the specific reason, or reasons, why examination of each of the records sought is material and necessary to the audit or investigation.
 - g) A statement showing that demands have been made for the records and the response to such demands.
 - h) Any additional information which will disclose the full circumstances of the situation requiring the use of a subpoena.

The above-mentioned information is necessary in order that the subpoena and the declaration of materiality under penalty of perjury supporting the issuance of the subpoena may be prepared with the degree of particularity necessary to ensure against infringements of the taxpayer's constitutional guarantees relating to unreasonable search and seizure and due process of law. A subpoena, embodying an omnibus order, commanding a person to bring all of his/her records, or those of a corporation, would probably be held to be unreasonable and unenforceable if court action later became necessary to enforce the subpoena. It always is necessary that the documents sought be described in a way that they are identified clearly. The reasons why their contents are necessary and material to the work of the Board in carrying out its duties must be specified.

COLLECTIONS

SUBPOENAS DUCES TECUM

(CONT) 799.050

3. Preparation and Service of Subpoena and Declaration. Upon request, and receipt of the necessary factual information, the legal staff will draft the subpoena duces tecum and the declaration of materiality. A request for the issuance of a subpoena should allow ample time for drafting of the subpoena and declaration of materiality, their service in the field, and a reasonable time for the witness to appear. Service is made by showing the original subpoena duces tecum to the person required to appear and by delivering to him/her personally at that time a copy of the subpoena together with a copy of the declaration of materiality. The person serving the subpoena should then execute a proof of service, in the form of a declaration under penalty of perjury which is attached to the original subpoena. After service is made, the original subpoena, proof of service and declaration of materiality are to be returned to headquarters for filing in the master file of the taxpayer.

In the case of serving a financial institution (which is a bank, savings and loan association, trust company, industrial loan company, or credit union) for the records of a customer, the California Right to Financial Privacy Act has made additional requirements. In addition to the normal service on the financial institution, the Privacy Act requires (1) that the customer affected also be served with a copy of the subpoena and (2) that the customer shall have a ten-day period in which to notify the financial institution of his/her intention to move to quash the subpoena. (see Subsection 135.073.)

4. Sample Documents. See Legal Information Bulletin #75.

REVOCATIONS — INITIAL CLEARING PROCESS

799.060

Revocations should be worked inside initially, and only those cases which require personal contact should be taken to the field. If there is an existing assignment on an account which is currently being handled in the field, or if file history shows inside clearance attempts would be unproductive, the revocation should be taken to the field for clearance.

On those revocations to be worked in-house, an initial telephone call should be made to attempt contact with the taxpayer informing him/her of the possible consequences of operating with a revoked permit, requirements to reinstate the permit and a commitment to perform. Follow-ups must be maintained.

If the taxpayer is contacted on the first telephone call but fails to perform, a second telephone call followed with a Notice to Appear within one week is recommended unless there is prior indication that the taxpayer will not respond to this type of action.

Additional telephone calls are recommended if there is no contact with the permit holder on the first call. There calls would be to the business, to the residence, or to any other leads you may have.

Special, irregular hours may be required to reach taxpayers who are not available during normal business hours.

The current and aged revocation lists should be used to monitor the revocation program on a monthly basis. All aged revocations should be regularly reviewed by a compliance supervisor with the compliance person who is assigned the case. Staff meetings to discuss any particular problems with accounts or procedures are recommended as a supplement to the monthly review.

MOBILEHOME DEALER REPORT OF SALES BOOKS

799.080

Effective July 1, 1981, the Department of Housing and Community Development (HCD) took over the registration and titling of mobilehomes. Mobilehome dealers are now required to release their Report of Sale books to HCD when they close out their business. The Board of Equalization and HCD have established an agreement which allows for mutual notification when a dealer terminates his/her business.

When HCD finds that a mobilehome dealer is out of business or has not renewed his/her dealer's license, the Board office having jurisdiction over the dealer's place of business will be notified by telephone. If the Board wishes to audit the business and requires the Report of Sale books, they will be delivered to the Board. When the Board has no further need for the books, they will be returned to:

Department of Housing and Community Development
Division of Codes and Standards
Occupational Licensing Section
P. O. Box 31
Sacramento, CA 95801

If the Board does not require the Report of Sale books, they will be subsequently destroyed by HCD.

When HCD is reviewing dealer Report of Sale books and finds evidence of noncompliance, copies of the Reports of Sale indicating noncompliance will be sent to the appropriate Board office.

When this Board finds that a mobilehome dealer has closed out or sold his/her business, it will contact the HCD Sacramento Occupational Licensing Section at one of the following numbers: (916) 323-9803 or ATSS 8-473-9803. If Report of Sale books are required, they can be requested at this time.

The Board will also provide the close-out date and location of books and records if known. If HCD has not already contacted the dealer, they will do so and thereafter either deliver the Report of Sale books to the Board or destroy them, depending upon the Board's requirements.

To determine a dealer's financial stability and ensure subsequent public protection, the Board will notify HCD, at one of the above telephone numbers, when either of the following situations arise on active mobilehome dealer accounts.

1. A mobilehome dealer has an outstanding liability which requires a field assignment.
2. A mobilehome dealer is being audited and it appears that the dealer is financially troubled. Before contacting HCD and providing this information, the following conditions must exist:
 - a) Based on the audit, it does not appear the business is properly financed to clear the probable liability.
 - b) There is factual information produced through our audit that the business is in financial trouble.
 - c) The district administrator approves the telephone call.

A notation that HCD has been contacted should be entered on the compliance or audit assignment.

COLLECTIONS

CONTROLLED SUBSTANCES

799.090

Assembly Concurrent Resolution (ACR) 143 deals with the illegal sales of narcotics and other illegal drugs (Controlled Substances). Under this program, the Board will be contacted by FTB and will issue determinations when there are assets being held by the arresting authorities or some other third party that can be levied upon or when FTB has monies to refund to the taxpayer because FTB has reduced the amount of its liability.

The ACR-143 program is controlled through headquarters and the Sacramento District Office. This procedure, however, should not deter you from issuing determinations on controlled substances and following-up with collection action on those cases where your office identifies a cause or is contacted directly by a FTB field office, local police authorities, or some other source.

If a loss of assets is probable through regular determination procedures, existing jeopardy determination procedures should be utilized. Headquarters should be contacted immediately and the levy initiated for collection on a same day basis when possible. Experience with these types of cases has shown that any delays in levying upon the assets results in the loss of the assets to attorneys or other third parties. If the assets are going to be retained by the arresting authorities as evidence, a levy should still be served to establish the Board's priority lien.